DOCUMENT RESUME

ED 452 453 CG 030 870

TITLE	Marketing Violent Entertainment to Children: A Six-Month Follow-Up Review of Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries. A Report to Congress.
INSTITUTION	Federal Trade Commission, Washington, DC.
PUB DATE	2001-04-00
NOTE	66p.; For the September 2000 version of this report, see ED 445 294.
AVAILABLE FROM	Federal Trade Commission, Washington, DC 20580. Tel: 1-877-FTC-HELP (Toll Free); Web site: http://www.ftc.gov.
PUB TYPE	Reports - Evaluative (142)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	Adolescents; *Advertising; Children; Films; Influences; Mass Media; *Mass Media Role; *Parent Responsibility; Popular Music; Video Games; *Violence
IDENTIFIERS	*Entertainment Industry

ABSTRACT

In September 2000, the Federal Trade Commission issued a report on marketing violent entertainment to children. The Commission found that all three segments of the entertainment industry intentionally promoted products to children that warranted parental cautions. This report provides a look at the advertising practices to see if the industries have continued to promote violent R-rated movies, explicit-content labeled music, and M-rated electronic games in the popular teen media; and whether rating or label information is included in the teen media or other advertising. To prepare this report, the Commission obtained information from television, magazine, and newspaper advertising. The analysis concluded that the motion picture and electronic game industries have taken a number of steps to limit the marketing of violent R-rated films and M-rated games to children. The industries have also provided more information regarding the content of their products to parents. The music industry has not taken any visible steps with respect to explicit-content labeled music. Because of First Amendment issues, the Commission continues to believe that vigilant self-regulation is the best approach to ensuring that parents are provided with adequate information to guide their children's exposure to entertainment media with violent content. (Contains 141 endnotes.) (JDM)

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MARKETING VIOLENT ENTERTAINMENT TO CHILDREN:

A SIX-MONTH FOLLOW-UP REVIEW OF INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING & ELECTRONIC GAME INDUSTRIES

A REPORT TO CONGRESS

FEDERAL TRADE COMMISSION
APRIL 2001

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EXECUTIVE SUMMARY

In January 2001, the Senate Commerce Committee requested that the Federal Trade Commission prepare a report following up on its September 2000 Report, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries*. The earlier Report concluded that the pervasive and aggressive marketing of violent movies, music, and electronic games to children undermines the credibility of the entertainment media industries' parental advisory ratings and labels and frustrates parents' attempts to make informed decisions about their children's exposure to violent content. The Commerce Committee asked the Commission to focus its review on two of the issues examined in the September 2000 Report: 1) whether the entertainment media industries continue to advertise violent R-rated movies, explicit-content labeled music, and M-rated electronic games in popular teen media, and 2) whether the entertainment media are including rating information in their advertising. This review answers those two questions.

The Commission's review indicates that the entertainment media industry has made some progress both in limiting advertising in certain popular teen media and in providing rating information in advertising. The industry must make a greater effort, however, if it is to meet the suggestions for improvement included in the Commission's Report as well as its own promises for reform.

Specifically, the Commission's review found that the motion picture industry has made some positive changes to its advertising practices. The Commission found virtually no advertisements for R-rated movies in the popular teen magazines reviewed. A spot-check of movie trailer placement revealed general compliance with the industry's commitment not to run trailers for R movies in connection with G- and PG-rated feature films. The motion picture studios now routinely include reasons for ratings in their print and television advertisements. Further, at least three-quarters of the official movie Web sites reviewed included the film's rating, the reasons for the rating, and links to sites where information on the rating system may be obtained. However, ads for R-rated movies still appeared on the television programs most popular with teens, and the rating reasons in ads were usually small, fleeting, or inconspicuously placed.

The Commission found that the music recording industry, unlike the motion picture and electronic game industries, has not visibly responded to the Commission's Report; nor has it implemented the reforms its trade association announced just before the Commission issued its Report. The Commission's review showed that advertising for explicit-content labeled music recordings routinely appeared on popular teen television programming. All five major recording companies placed advertising for explicit content music on television programs and in magazines with substantial under-17 audiences (in some cases more than 50 percent under 17). Furthermore, ads for explicit-content labeled music usually did not indicate that the recording was stickered with a parental advisory label. Only 25 percent of the print ads, 22 percent of the television ads, and about half of the 40 official recording company or artist Web sites reviewed showed the explicit content label or otherwise gave notice that the recording contained explicit content. Even when the parental advisory label was present, it frequently was so small that the words were illegible, and the ads never indicated why the album received the label. None of the recording company/artist Web sites the Commission reviewed linked to an educational Web site for information on the labeling system. The single positive note was that almost 40 percent of the Web sites included the music's lyrics, a step that can help parents screen recordings.

The Commission's review shows some improvement in the electronic game industry's advertising practices. The Commission found no ads for M-rated games on the popular teen television programs reviewed. The game company print ads nearly always included the game's rating icon (or the rating pending icon) and, in a large majority of instances, content descriptors. Television ads gave both audio and video disclosures of the game's rating, and more than 80 percent of the official game publisher Web sites displayed the game's rating. However, the electronic game industry has not stopped placing ads for M-rated games in magazines with a substantial under-17 audience; rather, the Commission found such ads placed at the same rate as before in gaming magazines with readerships of at least 40 percent under 17. (This may change in the future; in mid-March 2001, the industry adopted an advertising guideline prohibiting the placement of such ads in magazines with a 45 percent or more readership under 17.) The Commission also found that rating icons and descriptors in the print ads were often smaller than required by the industry code; television ads never included the content descriptors; only a little

more than half the Web sites reviewed displayed the rating clearly and conspicuously; and just 25 percent displayed the content descriptors anywhere on the site.

This review provides a snapshot of advertising practices by some industry members a few months after publication of the Commission's September 2000 Report. Thus, it cannot be statistically projected to industry advertising as a whole. In addition, because this review relies on advertising monitoring rather than internal industry documents, its results cannot be directly compared to the results of the review conducted for the September 2000 Report. Also, this review does not include information on children's access to these products at the retail level. The Senate Commerce Committee has requested a second, more comprehensive, report in the Fall of 2001, which will include information from individual industry members.

Because of First Amendment issues, the Commission continues to believe that vigilant self-regulation is the best approach to ensuring that parents are provided with adequate information to guide their children's exposure to entertainment media with violent content. The Commission is encouraged by the motion picture and electronic game industries' initial responses to its September 2000 Report, but it is disappointed by the almost complete failure of the music recording industry to institute any positive reforms.

More remains to be done by each industry. To avoid undermining the cautionary message in their ratings and labels, the industries should avoid advertising their products in the media most watched and read by children under 17. The challenge remains to make rating explanations as ubiquitous in advertisements as the rating itself and to present this important information clearly and conspicuously. The Commission urges individual industry members to keep the industry's own commitments and to go beyond those commitments to meet the recommendations the Commission made in its September 2000 Report.

I. INTRODUCTION

A. September 2000 Report on Marketing Violent Entertainment to Children

On September 11, 2000, the Federal Trade Commission issued a report entitled *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries.*[1] The Report responded to a request from President Clinton, and similar Congressional requests, that the Commission study whether the motion picture, music recording, and computer and video game ("electronic game") industries market products with violent content to youngsters. Specifically, the study's goal was to determine whether the industries intentionally promote products that they themselves acknowledge warrant parental caution in venues where children make up a substantial percentage of the audience.

The Commission's study found that for all three segments of the entertainment industry, the answer was "yes." The Commission found that although the motion picture, music recording, and electronic game industries had taken steps to identify products whose content may not be appropriate for children, companies in those industries routinely marketed such products to children under 17. The Commission also found that children under 17 were frequently able to buy tickets to R-rated movies and could easily purchase explicit-content labeled music recordings and Mature-rated ("M-rated") electronic games without being accompanied by an adult. The Report concluded that the pervasive and aggressive marketing of violent movies, music, and electronic games to children undermines the credibility of the industries' ratings and labels and frustrates parents' attempts to make informed decisions about their children's exposure to violent content.

In its Report, the Commission recommended that all three industries enhance their self-regulatory efforts by: 1) establishing or expanding codes that prohibit target marketing to children, for example by avoiding advertising in popular teen media, and impose sanctions for violations;[2] 2) increasing compliance at the retail level, for example by requiring identification or parental permission;[3] and 3) increasing parental understanding of the ratings and labels, for example by including the rating as well as the reasons for the rating in all advertising.[4]

B. Industry Response to the September 2000 Report

Following release of the Commission's Report, the Senate Committee on Commerce, Science, and Transportation conducted two hearings on the Commission's findings.[5] At the September 13 and 27, 2000 hearings, several members of Congress urged industry members to engage in more vigorous self-regulation. Industry members expressed their views of the Report and most indicated steps they would take in response to its findings.[6]

The Motion Picture Association of America ("MPAA") announced a 12-point initiative to address the suggestions in the Commission's Report. The MPAA's members promised to avoid running trailers for violent R-rated films before G-rated feature films, to review their policies regarding marketing violent R-rated movies to children, to avoid using children in research for R-rated films, to install compliance officers to review their marketing practices, to encourage movie theaters to enforce the R-rating restriction, and to take steps to include the reasons for ratings in print advertisements, on Web sites, and in home videos.[7] Individual studios made further commitments.[8]

The National Association of Theatre Owners ("NATO") also announced a 12-point initiative.[9] This initiative reaffirmed NATO's existing ID-check policy for R and NC-17 films and sought ways to improve compliance with that policy. NATO members agreed not to show trailers advertising R films before any G or PG film, and to only show those trailers before PG-13 films if the trailers are consistent in tone and content with the feature film. In addition, NATO members pledged to appoint an executive compliance officer and to seek ways to disseminate rating information, for example by including rating information in Web sites and on posters at theaters.

The Recording Industry Association of America ("RIAA") referenced its own recommended changes to the parental advisory labeling system that would take effect in October 2000, including the use of: 1) broad standards to make the labeling decision; and 2) guidelines for placing the advisory in advertising for explicit-content labeled recordings and on retail Web sites. In addition, the RIAA and representatives of two music recording companies, BMG Music and Artemis Records, indicated that they would consider making the lyrics of explicit content CDs available to help parents screen the recordings.[10]

The Interactive Digital Software Association ("IDSA") created a task force of electronic game company marketing executives to discuss how the industry should address the concerns raised about target marketing.[11] As a result, the IDSA Board of Directors adopted on March 14, 2001 a series of guidelines to govern the marketing of M-rated games to children under 17. These guidelines place limits on ad placements in magazines, television shows and Internet sites popular with teens.[12] In addition, the Entertainment Software Rating Board ("ESRB") said it would expand its self-regulatory program to monitor the disclosure of rating information in advertising by bringing on additional staff, creating more sophisticated and extensive ad monitoring and data collection systems, more aggressively challenging instances of noncompliance, and keeping better track of violators. It promised "meaningful sanctions" for serious or repeat violations of the ESRB code.[13]

C. Congressional Request for Follow-up Reports

In January 2001, Senator John McCain, Chairman of the Senate Commerce Committee, Ranking Member Ernest Hollings, and Senators Max Cleland and Sam Brownback requested that the Commission provide the Commerce Committee with two follow-up reports describing whether violent movies, explicit-content labeled music, and electronic games continue to be marketed to children under the age designated in the rating or label.[14] They requested that the first report examine two issues: 1) whether the industries continue to advertise violent R-rated movies, explicit-content labeled music, and M-rated electronic games in popular teen media; and 2) whether rating or label information is included in the teen media or other advertising. This report answers those two questions. The Senators further requested that the Commission provide a second report in the fall of 2001 that would examine the same issues, but would include more extensive information obtained from industry members.[15]

D. Sources of Information for this Report

To prepare this report, the Commission obtained information from four sources: television, magazine, and newspaper advertising; a review of movie trailer placement; official industry Internet Web sites; and industry trade associations.[16] To answer the Senate Commerce

Committee's question whether the industries continue to advertise these products in popular teen media, the Commission focused on the television programs and magazines that the previously submitted marketing plans indicated the companies used to reach children under 17. For example, the Commission reviewed network and cable television advertising from December 2000 and January 2001 that aired in the after-school and early prime-time slots when children under 17 are most likely to be watching television.[17] This monitoring included programs ranked by Nielsen as among the top ten syndicated programs in terms of youth audience during the weekday after-school and pre-prime-time periods.[18] (Details of the Commission's data collection are provided in Appendix A.)

In addition to television monitoring, the Commission reviewed the December 2000 and January-March 2001 editions of magazines with a substantial or majority readership under 17.[19] For in-theater trailers, a unique form of advertising, the Commission checked to see whether trailers for R-rated movies appeared before certain G, PG, and PG-13 feature films.

To answer the second question posed by Congress, whether the entertainment media industries are including rating information in their advertising, the Commission examined television, magazine, and newspaper advertisements for movies, music, and electronic games to determine if the ads contained rating, label, and content descriptor information, and, if so, whether the information was clear and conspicuous.[20] In addition, the Commission conducted a review of industry Internet Web sites, including retail sites, to determine if they contained clear and conspicuous rating and label information.

As discussed in more detail below, the results of this review provide a snapshot of current advertising practices by some industry members following the Commission's September 2000 Report. The advertising monitoring conducted for this report does not purport to be statistically projectable to industry advertising as a whole.[21] In addition, because this report relies on independent advertising monitoring rather than internal industry documents for its assessments, its results are not directly comparable to the results of the review conducted for the September 2000 Report.

II. MOTION PICTURES

A. Marketing to Children: Ad Placement

1. Industry commitments following the September 2000 Report

In the September 2000 Report the Commission found extensive marketing and, in many instances, explicit targeting, of violent R-rated films to children under 17. The Commission called on the motion picture industry to stop this practice and suggested that it "establish or expand codes that prohibit target marketing and impose sanctions for violations."[22] More specifically, the Commission recommended that industry stop placing advertising for R-rated movies in "media or venues with a substantial under-17 audience."[23]

In response, the MPAA promised that each studio would "review its marketing and advertising practices in order to further the goal of not inappropriately specifically targeting children in its advertising of films rated R for violence."[24] No industry-wide policy has been announced to date; however, some studios have made specific commitments to avoid targeting minors. Five studios (MGM, Warner Bros., Dreamworks, the Walt Disney Company, and Twentieth Century Fox) generally agreed not to target those under 17 in marketing R-rated movies.[25] Three of those, MGM, Warner Bros., and Twentieth Century Fox, agreed not to place ads for R-rated movies in print or television media with a substantial audience of children under 17, with "substantial" defined as more than 35% of the measurable audience.[26] In addition, Disney and Twentieth Century Fox agreed that their ABC and Fox television networks would limit the times during which advertisements for R-rated movies would be run.[27]

2. Industry advertising placement since the September 2000 Report

a. Television ads

The September 2000 Report found that television advertising is the most important medium in drawing an audience for a film: "Studio research shows that most moviegoers, and teens in particular, become aware of movies through television."[28] The Commission's review of studio marketing documents for the September 2000 Report indicated that advertising on weekends and during the "early fringe" and "prime access" hours, especially using "spot" (or local) ad buys, is the best way to reach younger viewers.[29]

The Commission's monitoring of television advertising placement for this report reveals that studios continue to advertise R-rated movies at the times and on the programs that are most effective in delivering those ads to teen viewers. Studios advertised R-rated films on syndicated programs popular with under-17 audiences airing between 6 and 8 p.m. For example, *Dracula 2000*, *Hannibal*, *Proof of Life*, *Shadow of the Vampire*, *Snatch*, *The Gift*, *The Pledge*, *Traffic*, and *Valentine*[30] were advertised on *Friends*, *Drew Carey*, *Seinfeld*, *Home Improvement*, *Spin City*, *Moesha*, and *The Simpsons* — all programs that rank in the top ten weekday syndicated shows in terms of teen audience size.[31]

Although relatively few films rated R for violence were advertised during the prime-time (8 to 9 p.m.) programming reviewed,[32] in some instances, such placement appeared to run counter to at least the spirit of individual commitments made by studios in response to the September 2000 Report. For example, despite Disney's pledge that its own ABC television network would "not accept advertisements for R-rated films in prime[-]time entertainment programming prior to 9 p.m.," Dimension Films (a division of Disney-owned Miramax) aired ads for *Dracula 2000* on the Fox Broadcasting Network during prime-time entertainment programming airing between 8 and 9 p.m.: *That '70s Show*, *The Simpsons*, and *Titus*.[33] In addition, by airing ads for that film on these programs, Fox apparently breached its own promise not to accept ads for R-rated movies on "any family programming."[34]

In an important improvement, only one ad for an R-rated movie (*Traffic*) was found on MTV's *Total Request Live* — an afternoon program that had been frequently used to promote the R-rated films studied for the September 2000 Report.[35]

b. Print ads

For this report, the Commission monitored advertisements in the December 2000 to March 2001 issues of magazines with substantial youth audiences (*DC Comics*, *Electronic Gaming Monthly*, *GamePro*, *Metal Edge*, *Unofficial PlayStation Magazine*, *Right On!*, *Seventeen*, *Teen*, *Teen People*, *Thrasher*, *Tips and Tricks*, *Vibe*, *WWF Magazine*, and *YM*).[36] The Commission did not identify any advertisements for R-rated movies currently in theaters in any of these magazine issues,[37] a notable improvement over the advertising practices documented in the September 2000 Report.[38]

c. In-theater trailers

As noted in the September 2000 Report, both studios and theaters jointly select the trailers shown before films in theaters.[39] Following the September 2000 Report, the MPAA indicated that member studios would not show trailers for movies rated R for violence before G-rated films in either theatrical release or on home video or DVD. All of the MPAA member studios, except Paramount, orally agreed at the September 27, 2000 Senate Commerce Committee hearing not to show trailers for R-rated films at PG-rated features.[40] The National Association of Theatre Owners ("NATO"), in its response to the FTC's Report, made a further pledge: each member theater agreed not to show trailers advertising R films before any G or PG film, and to only show those trailers before PG-13 films if the trailers are consistent in tone and content with the feature film.[41]

To determine whether trailers for R-rated films were being shown before PG-13, PG and G features despite the MPAA and NATO pledges, the Commission contracted with a commercial trailer checking service to check trailers shown before the following features: *Monkey Bone* (PG-13), *See Spot Run* (PG), and *Recess: School's Out* (G). The service surveyed trailers shown in 80 theaters in eight U.S. cities on March 2-3, 2001.[42]

This review found substantial compliance with the industry pledges regarding trailer placement. The few violations of the pledge not to run trailers for R-rated films before G- or PG-rated feature films appear to be the result of decisions by individual theater operators rather than the studios or the theater chains.[43] The review did find that trailers for R-rated films were frequently shown before the PG-13-rated *Monkeybone*,[44] but this practice does not violate MPAA's commitment, which did not extend to PG-13 films. Based on the MPAA rating reasons, it would appear that a few NATO member theaters violated their commitment to show trailers for R films before PG-13 films only if the trailers are consistent in tone and content with the feature film when they showed trailers for films rated R for graphic violence before *Monkeybone* ("Rated PG-13 for crude humor and some nudity").[45]

3. Analysis of industry's practices since the September 2000 Report

These data suggest that movie studios continue to advertise R-rated films on television programs with substantial teen audiences. Although the industry's commitment not to advertise

R-rated movies on programs with a substantial under-17 audience is a positive step, the 35% youth audience threshold adopted by some industry members will mean little practical change in the ways R-rated movies are advertised on television, with the notable exception of certain programming on cable television networks such as MTV and BET.[46]

By contrast, the studios have been effective in not placing ads in print media with substantial youth readership. Furthermore, the Commission's trailer check suggests general compliance with the industry's commitments regarding the placing of trailers for R-rated movies. The few violations identified suggest noncompliance on the part of a few individual theaters rather than a systemic failure to heed those commitments, and suggest the need for additional guidance to individual theater chains and theaters.

Moreover, anecdotal reports suggest that the studios' commitments not to target audiences under 17 are having some impact. For example, one press account describes steps taken to avoid marketing Miramax Films' *Dracula 2000*, MGM's *Hannibal*, Warner Bros.' *Valentine*, and Paramount Pictures' *Lucky Numbers* to audiences under 17.[47] The article reports that Miramax Films restricted *Dracula 2000*'s stars from appearing in venues popular with youth such as MTV's *Total Request Live* and teen magazines.[48] Paramount Pictures avoided putting *Lucky Numbers* star John Travolta on *Total Request Live*.[49] MGM indicated that it would not air ads for *Hannibal* on MTV before 9 p.m. or in some magazines with substantial youth readership, while Warner Bros. announced that it would advertise *Valentine* on MTV only after 11 p.m. and would not produce a music video for the soundtrack.[50]

B. Ratings and Reasons for Ratings in Ads

1. Industry commitments following the September 2000 Report

In the September 2000 Report, the Commission found that although movie advertisements generally displayed a film's letter rating, they never contained the reasons for the rating. Given that rating reasons had been incorporated into the MPAA rating system for ten years, and given consumer survey findings indicating that consumers want more information from the rating system, the Commission recommended that industry clearly and conspicuously display the rating and the rating reasons in all advertising, product packaging, and Web sites. In response, the

MPAA committed to "seek ways to include" rating reasons in print ads and official Web sites (but not television ads) for movies rated R for violence.[51] The MPAA member studios also pledged to link their official movie Web sites to educational Web sites where parents may obtain information about the rating system and the reasons for film ratings.[52]

For this report, the Commission reviewed television and print ads and Internet sites in late 2000 and early 2001 to see if the Commission's and the MPAA's recommendations were being met.

2. Industry advertising practices since the September 2000 Report

a. Television ads

The Commission's review of television ads reveals that while the motion picture studios include the letter rating in their commercials, and have generally incorporated the reasons for the rating as well, the reasons frequently are difficult or impossible to read.

The Commission found that ads for R- and PG-13-rated movies on the syndicated programs reviewed included the letter rating in every case.[53] In addition, rating reasons were provided in all but two of 60 ads for films rated R for violence. In more than half of the ads for R-rated movies, however, the rating reasons were either unreadable or difficult to read.[54] Of over 400 ads for PG-13 movies reviewed, over one-half either did not provide rating reasons, or provided rating reasons that were difficult to read.[55] Apart from small type size, many ads display the rating reason fleetingly, often with other information about the cast and production. Given these practices, even an alert viewer would have difficulty finding and then reading the rating reason.

Still, these numbers reflect an improvement over pre-Report practices, when rating reasons were not displayed at all. Moreover, the studios' efforts to include rating reasons in television ads go beyond the requirements of the MPAA's initiative, which committed its members to seek to include rating reasons in print and online ads but not television ads, and then only as to movies rated R for violence. It also should be noted that certain ads, such as for Warner Bros.' *Miss Congeniality*, prominently displayed the rating reasons so an interested parent would be able to find and read the information before it disappeared from the screen. Nevertheless, in most cases the ads reviewed were not effective in providing parents with information about the reason for

the rating, whether because the information was displayed only briefly, in small type, or surrounded by other text.

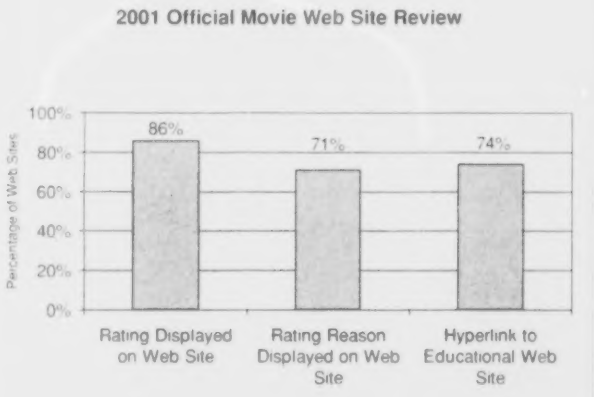
b. Print ads

For this report, the Commission reviewed movie advertisements in the same magazines discussed in the Advertising Placement section above,[56] as well as newspaper ads,[57] to determine whether the rating and rating reason were displayed, and to assess whether the rating reason was legible. The Commission reviewed more than one thousand (1006) magazine and newspaper ads for PG-13- or R-rated films. With very few exceptions, these ads either displayed the rating itself or announced that the rating was pending, as required by the MPAA. The Commission's review also showed, again with very few exceptions, that studios are now placing rating reasons in their ads.[58] Ads by Sony Pictures' divisions Columbia Pictures and Screen Gems, Touchstone (a Disney division), Universal, and Warner Brothers featured rating reasons that were generally readable and in some cases clear and conspicuous. Nonetheless, for the ads as a whole, the rating reasons were not clear and conspicuous. In more than 300 advertisements, the rating reasons were so small that the words were literally unreadable, or were at least partially obscured by ad images or graphics.[59] And in many other cases, though deemed legible, the print was small, even though the rating reasons are often brief.[60]

c. Internet ads

(1) Studio Web sites

For the September 2000 Report, the Commission surveyed 46 Web sites, finding that 89% indicated the rating, but none provided the film's rating reason. In response to the Report, the MPAA committed that members would "seek ways to include" rating reasons in official Web sites for movies rated R for violence, and would link their official movie Web sites to mpaa.org, filmratings.com, and



parentalguide.org, which are informational sites where parents may obtain information about the rating system and the reasons for film ratings.

To check current practices on the Internet, the Commission reviewed 35 official Web sites for movies rated PG-13 or R where the rating was assigned, at least in part, based on violent content.[61] The results show significant progress in the movie industry's online practices since the earlier review of official motion picture Web sites in December 1999: nearly all the sites checked still disclose the film's rating, and almost three quarters now provide the rating reason.[62]

The Commission noted a wide range of rating information practices on these official Web sites. Some sites went beyond the self-regulatory system requirements in highlighting the film's rating information.[63] Some sites did not provide any rating information whatsoever.[64] More common, however, were those sites that displayed the rating information in such a manner that a consumer might have difficulty locating it, by placing it well below the "screen break" or in small print that contrasted poorly with the site's background.

Three quarters of the sites (26 of 35) linked to at least one of the three rating information Web sites that the MPAA indicated its members would link to.[65] Two of the 35 sites contained a warning, in addition to the film's rating or content description, that children or younger visitors should not view the site.[66]

(2) Theater Web sites

The Commission also examined the Web sites for eight major theater chains (AMC, Carmike, Cinemark, General Cinemas, Loews Cineplex, National Amusement, Regal, and United Artists) to check rating practices at their sites. All but two of these companies (Carmike and General Cinemas) were, at the time the sites were checked, members of NATO, which pledged that its member companies would "seek ways to include ratings information in their web sites, and/or to link with sites that contain additional ratings information."[67] This review showed that all the theater chains' Web sites displayed the movies' ratings, a quarter displayed the rating reasons, and nearly two thirds linked to the informational Web sites.[68]

Theater Web Site Review Results

	NATO Theater Chains	Non-NATO Theater Chains	Total
Site displays MPAA rating	6 of 6	2 of 2	8 of 8
Site displays MPAA rating reason	2 of 6	0 of 2	2 of 8
Site provides additional ratings information	5 of 6	1 of 2	6 of 8
Site links to MPAA.org, filmratings.com, or parentalguide.org	4 of 6	1 of 2	5 of 8
Site offers ticket sale	6 of 6	1 of 2	7 of 8
Site provides rating at point of purchase	6 of 6	0 of 1	6 of 7
Site provides rating reason at point of purchase	0 of 6	0 of 1	0 of 7
Site provides an additional warning or advisory	3 of 6	0 of 1	2 of 7

United Artists' Web site is noteworthy. The site provides rating information, as well as a statement of the company's policy on restricting access to R-rated films.[69]

(3) Home video retailer Web sites

In the September 2000 Report, the Commission reported on a survey of retailers' Internet sites selling R-rated movies.[70] The survey found that the sites did provide movie ratings and displayed them in a place a user would likely see, but no site provided the rating reason for any film.

The Commission conducted a similar survey in February 2001 to review current practices. The Commission again examined five R-rated movies (*Hollow Man*, *Scary Movie*, *Shaft*, *The Matrix*, and *The Patriot*) for sale at five online retailers' sites (Amazon.com, Bestbuy.com, Reel.com, SamGoody.com, and Towerrecords.com).[71] Each of the five retailers displayed the movie's MPAA rating — usually just the letter rating, not the icon or the word "Restricted" — in a clear manner, although none of the retailers provided the rating on the purchase page. Retailers were not consistent in providing the rating reasons for the films: only two of the retailers displayed the rating reasons, and then only for some films. Amazon.com also displayed a statement that the R-rated movies were "Not for sale to persons under age 18."

3. Analysis of industry's practices since the September 2000 Report

Overall, the motion picture studios have clearly responded to the Commission's recommendation to include rating reasons in advertising so that parents can better judge the appropriateness of a film for their children, and the self-regulatory system is very effective in ensuring that advertisements show the rating. The remaining challenge is to make rating reasons as ubiquitous as the rating in advertising, and to present this important information clearly and conspicuously. Home video retailers, in contrast, are not providing the rating reason consistently in their advertisements, and most theater chains do not provide this information on their official Web sites.

III. MUSIC RECORDINGS

A. Marketing to Children: Ad Placement

1. Industry commitments following the September 2000 Report

The September 2000 Report studied the marketing of 55 explicit content recordings and found that all of them were marketed to children under 17.[72] The Commission encouraged the music recording companies to cease such marketing efforts and to adopt an industry-wide anti-targeting code.[73]

Shortly before the Report's release, the Recording Industry Association of America ("RIAA") announced that advertising for explicit-content labeled recordings should not appear in publications, Web sites, or other commercial outlets whose primary (*i.e.*, 50% or more) market demographic is 16 years of age or younger.[74] Immediately after the Report's release, however, the RIAA withdrew this anti-targeting recommendation, later informing the Commission that the increased focus by Congress, the Commission, and several states on bringing law enforcement actions against the entertainment companies caused the withdrawal. The association stated that formally adopting such a provision would only increase the likelihood that its members would be the subject of law enforcement actions and penalties and would "discourage participation in the successful parental advisory program."[75] The RIAA's withdrawal of its anti-targeting recommendation represents a move away from measures adopted by the movie and electronic game industries to prevent the marketing of violent entertainment products to children.[76]

2. Industry advertising placement since the September 2000 Report

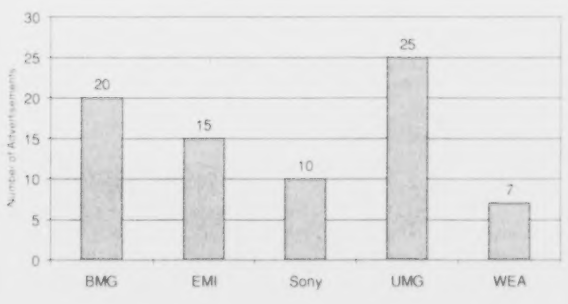
a. Television ads

For this report, the Commission examined whether recording industry members placed ads for explicit content recordings during eight popular teen programs monitored.[77] The seven-week review found that advertising for explicit content recordings appeared regularly on MTV programs that aired during after-school and early evening hours. Universal Music Group Recordings ("UMG") and Sony Music Entertainment ("Sony Music") ran advertisements for explicit content recordings by Blink 182, Crazy Town, DMX, Ja Rule, Rage Against the Machine, SPM, Wu-Tang Clan, and Xzibit, as well as ads for the *Dracula 2000 Soundtrack* and *The Source Hip Hop Hits Volume 4*, on MTV's *Total Request Live* and *WWF Heat*.[78] Advertisements for the *Dracula 2000 Soundtrack* and the *Up in Smoke Tour* music video also aired during *WWF Smackdown*. In addition, another review showed that all five music recording companies — BMG Entertainment ("BMG"), EMI Recorded Music, N.A. ("EMI"), Sony Music, UMG, and Warner Music Group ("WEA") — advertised their explicit content recordings on popular teen shows such as MTV's *Total Request Live*, BET's *Top 10 Live*, and UPN's *WWF Smackdown*.[79] The Commission's spot review of MTV's *Total Request Live* further found an advertisement for the *Dracula 2000 Soundtrack*.

b. Print ads

For this Report, the Commission reviewed the December 2000 through March 2001 editions of six magazines with a majority or substantial readership under 18 to determine whether they contained advertising for explicit content recordings.[80] The Commission's examination revealed that the five major recording companies placed advertisements for explicit content recordings in one or more of the following magazines: *Metal Edge*, *Right On!*, *Thrasher*, and *Vibe*.[81]

Ads for Stickered Recordings in Magazines with a Majority or Substantial Youth Audience



3. Analysis of industry's practices since the September 2000 Report

There has been neither self-regulatory guidance from the RIAA nor commitments from individual music companies to limit the placement of advertisements for music recordings stickered with the parental advisory label. The Commission's review makes clear that industry members continue to advertise explicit content recordings in magazines or on television programs with substantial under-17 audiences.

B. Advisory Label and Reasons for Label in Ads

1. Industry commitments following the September 2000 Report

In its September 2000 Report, the Commission found that the music recording industry members did not provide advisories in advertising.[82] It therefore recommended that industry members clearly and conspicuously disclose the explicit nature of a recording — with content descriptors — in all advertising for these recordings. Shortly before the Report was issued, the RIAA had asked its industry members to place the parental advisory label or other prominent notice of explicit content: 1) in *print* advertising for explicit-content labeled recordings, and 2) in *online retail* sites in all stages of the transaction from the catalog pages to the shopping cart. While the RIAA guidelines only address advisories in certain media, in February 2001 the association indicated to FTC staff that it would consider recommending that *all* advertising for explicit content recordings (*e.g.*, television, radio, and artist Internet sites) provide an advisory.[83]

According to the RIAA, the recording companies have started to place the explicit content label in print advertising, but because print advertising must be reserved several months in advance, such disclosures are only now beginning to appear.[84] The RIAA told the Commission, however, that its industry members will not adopt the FTC's recommendation to provide content descriptors, or the reasons for the label, in advertising (contrary to the movie and electronic game industries). The association also described the complexity and difficulty in making lyrics for explicit content recordings publicly available, but noted that it would continue to explore this possibility with music publishers.[85]

2. Industry advertising practices since the September 2000 Report

a. Television ads

As noted above, the RIAA has not adopted the FTC's recommendation that advisory labels be placed in television advertisements. The Commission's spot-check confirms that such television advertising rarely provides such disclosures: of the 23 ads for explicit content recordings that appeared on certain television programs with substantial teen audiences (referenced above), only five of the ads contained the parental advisory label (ads for *The Mark, Tom, and Travis Show* (two ads), the *Dracula 2000 Soundtrack* (two ads), and the *Source Hip Hop Hits Volume 4* (one ad)). Even when the labels displayed were visible, none was clearly readable.

b. Print ads

To assess industry compliance with the FTC and RIAA recommendations, the Commission reviewed the December 2000 through March 2001 issues of music magazines: *Metal Edge, Right On, Rolling Stone, Seventeen, Spin, Teen People, Thrasher*, and *Vibe*.[86] This review shows that advertisements for explicit-content labeled recordings still rarely display a clear parental advisory. Only 45 of 147 (31%) print ads for labeled recordings displayed any parental advisory label; most of these advisories presented the advisory as a black and white blur, often too small or inconspicuously placed to be noticed or read. The Commission's review, however, did reveal eight instances of clear and conspicuous disclosures about an album's content, including ads for Shyne (BMG), Amen and Fatboy Slim (EMI), and Disturbed and Slimm Calhoun (WEA).

c. Internet ads

To determine whether recording industry members were providing online disclosure of explicit content, the Commission conducted two Web site surfs: a surf of 40 artist/recording company sites and a surf of five major music retailer sites.

(1) Recording company Web sites

The review of official music Web sites shows that less than half of such sites provided notice of a recording's explicit content.[87] Of the 40 official music Web sites surfed,[88] 38 sites showed a picture of the CD cover, with the advisory label appearing on 15 of the 38 (39%) covers. Only two of these advisories were legible.[89] Many sites used other methods to

communicate the explicit nature of a recording, however. Eighteen of the 40 sites (45%) provided consumers with additional information, usually in the form of an enlarged parental advisory placed somewhere on the site or a text disclosure stating "explicit" placed near the picture of the CD on the purchase page (*e.g.*, the Nelly, Ludacris, Cypress Hill, and Crazy Town Web sites).[90] In addition, 15 of the 40 sites (38%) provided the lyrics for the explicit content recordings. None of the sites surfed linked either to www.riaa.com or to www.parentalguide.org.[91]

(2) Retailer Web sites

A review of the Web sites of five major music retailers showed that these sites more frequently provided some information about the explicit nature of the recording for sale than the recording company/artist sites did. Most of the retail sites made some disclosure about an album's explicit content, but only one fully complied with the RIAA-recommended guidelines.[92]

The Commission reviewed Amazon.com, Bestbuy.com, Cdnow.com, Samgoody.com, and Towerrecords.com to see how these sites promoted five top-selling explicit content albums.[93] Four of the five retailers provided some information, usually in a text disclosure that read "explicit lyrics," "explicit," or simply "PA" (presumably short for "parental advisory"), about the content of the recording. Only Amazon.com, however, fully complied with the RIAA-recommended disclosures by providing consumers with advisories that read "explicit lyrics" and that appeared in large easy-to-read print, prominently displayed, throughout the purchasing process. Best Buy, CD Now, and Tower Records provided some form of more limited disclosure, such as an "explicit" disclosure at one point on the site or the abbreviation "PA."[94] Samgoody.com only used the disclosure "clean" next to the edited version, providing consumers with no information about the content of the explicit version.

Music Retailer Web Site Surf

	Amazon	Best Buy	CdNow	Sam Goody	Tower Records
Does the advisory appear on the album cover art?	3 of 5	1 of 5	3 of 5	2 of 5	4 of 5
Is the advisory readable?	1 of 3	0 of 1	0 of 3	0 of 2	0 of 4
Is there other clear and conspicuous information about explicit content?	5 of 5	5 of 5	3 of 5	0 of 5	3 of 5
	"explicit lyrics"	"parental advisory"	"explicit" and "explicit version"	only "clean" version noted	"explicit"
Are the disclosures provided throughout purchasing process?	5 of 5	0 of 5	0 of 5	0 of 5	0 of 5

3. Analysis of industry's practices since the September 2000 Report

The Commission's review shows that most advertisements for explicit content recordings do not contain the clear disclosures recommended by the Commission. Of the three advertising media reviewed (television, print, and Internet), the Web sites were the most likely to provide some notice of a recording's explicit content, with retail sites often providing an advisory and record company/artist sites more frequently providing lyrics. The lack of clear and consistent disclosures points to the need for industry-wide guidelines recommending advisories in *all* advertising and increased efforts by individual industry members to provide such information.[95] In March 2001, the RIAA informed the Commission that it had begun discussions about whether *all* future advertising for explicit content recordings should clearly display an advisory.[96] Neither the RIAA nor any of its members, however, is willing to provide content descriptors in advertising or labeling.

IV. ELECTRONIC GAMES

A. Marketing to Children: Ad Placement

1. Industry commitments following the September 2000 Report

In the September 2000 Report, the Commission noted that the electronic game industry has a comprehensive self-regulatory system that includes a prohibition on marketing games to

children under the age designated in the rating. However, the Commission found widespread violation of this anti-targeting provision, as evidenced by many instances of express targeting of violent M-rated games to underage children, in addition to advertising in magazines or on television shows with a majority or substantial under-17 audience.[97] The Commission recommended that the industry enforce its anti-targeting code provision.

In response, the Interactive Digital Software Association stated that "the IDSA does not condone or excuse the marketing of Mature rated products to persons under 17 and, indeed, we condemn it." But it questioned whether magazines with a large or even majority under-17 readership, and other media popular with young teens, should be off-limits to industry members seeking to market M-rated games:

> [W]e reject the FTC's operating assumption that ads in publications that happen to have some noteworthy percentage of young readers, but a substantial and perhaps even dominant share of older readers and users, is inappropriate.[98]

In mid-March, the IDSA Board of Directors adopted guidelines that would limit the placement of advertisements for M-rated games in magazines where 45% or more of the readers are under 17, and on television shows where 35% or more of the viewers are under 17.[99]

2. Industry advertising placement since the September 2000 Report

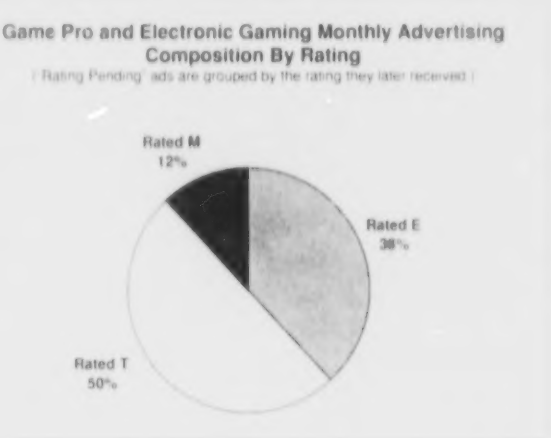
a. Television ads

In the September 2000 Report, the Commission found that game companies frequently targeted M-rated games to teen audiences by advertising on television programs popular with teens aged 12 to 17. For this report, the Commission examined whether ads for M-rated games continued to be shown during certain television programs popular with teen audiences.[100] The seven-week review of eight top teen network and cable programs (*Total Request Live*, *WWF Heat*, *The Simpsons*, *Malcolm in the Middle*, *That '70s Show*, *Titus*, *7th Heaven*, and *WWF Smackdown*) did not reveal a single instance of an ad for an M-rated game appearing during these broadcasts. Nor did the Commission's spot check of syndicated programs favored by teens (*Friends*, *Drew Carey*, *Seinfeld*, *Home Improvement*, *Spin City*, *Moesha*, and *The Simpsons*) find ads for M-rated games. The spot check did identify numerous ads for Teen- and Everyone-rated games. These findings are encouraging; however, given the limited scope of the review, the

absence of M-rated game ads on the shows reviewed does not rule out the possibility either that ads for M-rated games may have appeared on other teen programming during the period,[101] or simply that few M-rated games were advertised on TV during the period reviewed.

b. Print ads

In the September 2000 Report, the Commission found that game companies frequently placed ads for M-rated games in *GamePro* and *Electronic Gaming Monthly*,[102] game enthusiast magazines that are widely read by young teens and pre-teens. These magazines have at least 40% 16 and under audiences.[103] For this report, the Commission reviewed four months (from December 2000 through March 2001) of *GamePro* and *Electronic Gaming Monthly* to see if M-rated games were still being advertised in these publications. This review found virtually no change in the percentage of ads for M-rated games in these magazines: 12% of the ads were for M-rated games, compared to 13% in the earlier review. A breakout of the magazine ads by rating[104] is presented below.


Game Pro and Electronic Gaming Monthly Advertising Composition By Rating
('Rating Pending' ads are grouped by the rating they later received.)
Rated M 12%
Rated E 38%
Rated T 50%

Specifically, eight industry members[105] placed in those magazines a total of 41 advertisements for 12 violent M-rated games over that four-month period: Activision (*Blade*, *Quake III Arena*), Capcom (*Dino Crisis 2*, *Onimusha: Warlords*, *Resident Evil Code Veronica*, *Spawn: In the Demon's Hand*), Eidos (*Fear Effect 2: Retro Helix*),[106] Fox Interactive (*Alien Resurrection*), Infogrames (*Unreal Tournament*),[107] Konami (*Silent Scope*), Sierra Studios (*Half-Life*), THQ (*Evil Dead: Hail to the King*).[108]

Notably, the April issue of *GamePro* contains only two M-rated ads, perhaps indicating a positive change in industry's ad placement practices in *GamePro*. Moreover, IDSA's new M-rated Ad Guides would prohibit continued placement of M-rated ads in *GamePro*, although it would allow such advertisements in *Electronic Gaming Monthly* and other publications with a very substantial but less than 45% 16 and under readership.[109]

3. Analysis of industry's practices since the September 2000 Report

The Commission's review of print and television ads for electronic games suggests that the electronic game industry may be limiting its advertising on popular teen television programs, while continuing to advertise in popular teen game enthusiast magazines. Although industry's new guidelines limiting print and TV ad placements are an improvement, they still sanction the advertising of M-rated games in gaming and other magazines with a substantial under-17 readership and permit ad placements on most of the teen-oriented television shows previously used by industry members to market M-rated games to children. Their continued allowance of such ad placement practices undercuts industry's commitment to avoid targeting children younger than the age designated in a game's rating.

B. Ratings and Reasons for Ratings in Ads

1. Industry commitments following the September 2000 Report

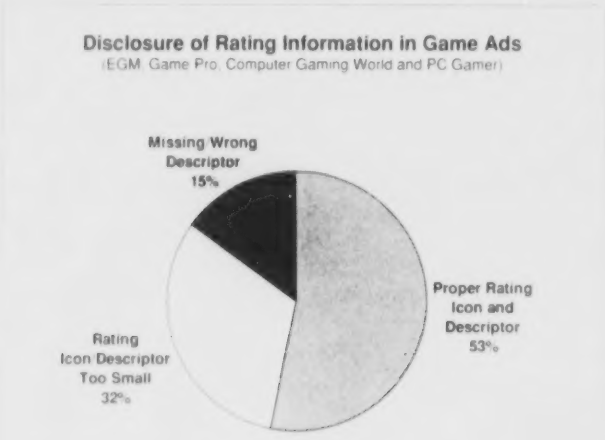
In the September 2000 Report, the Commission noted that the electronic game industry requires the display of rating icons and, in most cases, content descriptors on packaging, in print ads, and online. The industry code also requires television ads to include a voice-over stating the game's rating (but not the content descriptor).[110] The Commission suggested that *all* advertising contain both the rating and the content descriptors, but the electronic game industry has not changed its advertising code ("Adcode") to require content descriptors in television or radio advertising.

2. Industry advertising practices since the September 2000 Report

a. Print ads

To check whether ratings and content descriptors are being clearly and conspicuously disclosed, for this report the Commission reviewed print ads appearing in four popular gaming enthusiast publications – *GamePro*, *PC Gamer*, *Computer Gaming World*, and *Electronic Gaming Monthly* – during a four-month period (December 2000-March 2001).[111] Overall, the review found that most of the time the ads contained the ratings and the content descriptors as specified by the ESRB. However, nearly half (47%) of the ads reviewed either failed to display

the ratings and descriptors required by the ESRB (15%),[112] or used icons or descriptors that failed to meet the ESRB's minimum size or position requirements (32%).[113]


Disclosure of Rating Information in Game Ads
(EGM, Game Pro, Computer Gaming World and PC Gamer)
Missing Wrong Descriptor 15%
Proper Rating Icon and Descriptor 53%
Rating Icon Descriptor Too Small 32%

While the ads of 10 companies (Atlus, Bethesda Softworks, Black Isle Studies, Blue Byte, Jo Wood Production, NC Interactive, Rage Games, Squaresoft, Take 2 Interactive, and The Learning Company) were in complete compliance with the Adcode's requirements, 22 companies[114] placed at least one ad not in substantial compliance. Six of those 22 placed four or more non-complying ads.[115] In nearly all instances, the ads failed to include content descriptors as required by the Adcode and as suggested by the Commission. One company twice ran an ad for a game without any rating information at all.[116] In numerous other instances, companies placed ads that displayed rating icons and descriptors smaller in size than required by the Adcode.

The Commission also reviewed retailer ads (Best Buy, Electronics Boutique, Wal-Mart, Babbages/Funcoland, R20games.com, Target, and Chips & Bits, Inc.) in these same magazines. Generally, these ads promoted several electronic game titles of various ratings.[117] With the exception of Chips & Bits,[118] all of the retailers displayed the rating icon, usually on the picture of the package cover. None displayed any content descriptors.

b. Television ads

The Commission's spot review of television programs broadcast during the months of December 2000 and January 2001 did not find any instances where the ad failed to include a voice-over of the game's rating, but did find a few instances where the visual depiction of the rating icon was smaller than required by the Adcode.[119] None of the ads contained content descriptors.

c. Internet ads

(1) Game publisher Web sites

The Adcode has several specific disclosure requirements for game publisher Web sites. Web sites must include the rating icon and, on the purchase page, any applicable content descriptors issued by the ESRB for that title.[120] For game demos and trailers accessed online, the site must display the rating icon next to the name of the game on the Web page where the demo and/or trailer is accessed.[121]

For the September 2000 Report, the Commission found that three-quarters of the 40 game publisher Web sites[122] surfed in 1999 complied with the basic requirement to display the ESRB rating icon, but that less than 30% displayed the rating icon where a demo could be downloaded or viewed, and only 9% displayed the content descriptors at the point where one could order a game.[123]

For this Report, the Commission reviewed official game publisher sites for 40 Mature-rated games and found slightly improved results. Over four-fifths of the sites displayed the ESRB rating,[124] although only 9% gave the game's rating where a demo could be downloaded. Nineteen percent displayed the content descriptors at the point where one could order a game (although 25% of the sites displayed the descriptors somewhere on the site).[125]

Most sites displayed the game's rating, although less than half displayed that rating clearly and conspicuously. For example, Tecmo's *Deception III: Dark Delusion*[126] and Capcom's *Onimusha Warlords*[127] both provided a very large rating icon. Acclaim's *Turok 3: Shadow of Oblivion*[128] not only provided a rating icon larger than the industry norm, but also displayed the rating on virtually every page of the site, rather than just the home page. Other sites, however, did little to draw attention to the game's rating information.[129] Although more than half of the sites provided either a trailer or "movie" showing excerpts of the game play, or a playable demo of the game, only two sites provided the game's rating or some other indication before providing access to the trailer or demo that it contained mature content (two others provided the rating on the trailer itself).[130]

As with the 1999 surf, few Web sites reviewed for this report provided the game's content descriptors, and some that did, displayed them in ways that made it unlikely that the visitor

would see them. For example, the content descriptors may appear only if the visitor happens to place the cursor over the rating icon.[131] A majority of the sites offered the visitor the opportunity to purchase the game. Of these sites, nearly all provided the game's ESRB rating at the point of purchase; however, only four provided the game's content descriptors on the purchase page.[132] Electronic Arts' online store — EA.Com — was clearly the best, disclosing, clearly and prominently, both the rating and the descriptors on both the product information and ordering pages.[133]

Web Site Adcode Issues

	Summaries by Sites			Percentage Yes
	Yes	No	N/A	
ESRB rating displayed?	33	7		83%
ESRB content descriptors displayed?	10	30		25%
Game clip available for downloading or viewing?	23	17		58%
Rating at point of download or viewing?	2	21	17	9%
Games offered for sale?	21	19		53%
ESRB rating at point-of-sale?	17	4	19	81%
ESRB content descriptors at point-of-sale?	4	17	19	19%

(2) Retailer Web sites

For the September 2000 Report, the Commission's spot-check of five online retailers' Web sites revealed that the sites generally indicated the M rating in a place the user would likely see it, though they did not necessarily display the rating icon. Only one game retailer provided content descriptors. For this report, the Commission conducted another spot-check of six online electronic games retailers' sites (Amazon.com, EBWorld.com, Express.com, Outpost.com, BestBuy.com, and ToysRUs.com) to see whether they were providing rating information as recommended by the Commission.[134]

Although retailers are not subject to the same self-regulatory requirements as game publishers, they have been encouraged to use the ESRB rating system in connection with their

sales practices.[135] Most of the retailers surfed displayed a game's rating on the product information page,[136] but only a few provided descriptors for the games surveyed.[137] Two of the sites provided game trailers so that visitors could view excerpts of a game, but without any statement that the game had been rated as unsuitable for children under 17.

ToysRUs.com (currently run in conjunction with Amazon.com),[138] for example, displays the games' ratings clearly and conspicuously but rarely displays the games' content descriptors.[139] For all the games surfed on ToysRUs.com, the retailer displayed the statement "Content suitable for ages 17 or older" on the information page, and provided a link within the Amazon.com site to information about the ESRB ratings and content descriptors.[140]

3. Analysis of industry's practices since the September 2000 Report

Overall, the review shows some improvement from the Commission's September 2000 Report[141] and likely reflects increased efforts by the ESRB to encourage greater adherence to the Adcode's requirements. Still, the industry should address the paucity of clear and conspicuous displays of rating icons and content descriptors on official Web sites and the absence of content descriptors in television commercials. Further, the industry should do more to encourage retailers of electronic games to provide parents with this important information.

V. CONCLUSION

Six months after the Commission's September 2000 Report, it appears that the motion picture and electronic game industries have taken a number of significant steps to limit marketing violent R-rated films and M-rated games to children and to provide parents with more information regarding the content of their products. In contrast, the music recording industry has not taken any visible steps with respect to explicit-content labeled music.

The Senate Commerce Committee has requested, in addition to this report, another follow-up report in the Fall of 2001. The Committee requested that the second follow-up report include information from the industry members themselves. At that time, the Commission will be in a better position to assess the extent to which the entertainment media industries have taken steps to avoid targeting children under 17 in their marketing of violent R-rated movies, explicit-content labeled music, and M-rated electronic games.

Because of First Amendment issues, the Commission continues to believe that vigilant self-regulation is the best approach to ensuring that parents are provided with adequate information to guide their children's exposure to entertainment media with violent content. The Commission is encouraged by the motion picture and electronic game industries' initial responses to its Report, but more remains to be done, especially by the music recording industry. To avoid undermining the cautionary message in the industries' ratings and labels, the industry should avoid advertising their products in the media most watched and read by children under 17. And now that ads are including reasons for ratings, that information should be legible. The Commission urges individual industry members to keep the industry's own commitments and to go beyond those commitments to meet the suggestions the Commission made in its September 2000 Report.

ENDNOTES

1. Federal Trade Commission, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries* (Sept. 2000) ("September 2000 Report").

2. More specifically, the Commission recommended that all three industries institute codes of conduct that:

- Prohibit placing advertising for R-rated/M-rated/explicit-labeled products in media or venues with a substantial under-17 audience.
- Prohibit licensees from marketing action figures, toys, and other products associated with R movies and M games to under-age audiences and require a disclosure that the product is based on an entertainment product rated R or M.
- Provide for no-buy lists of media outlets popular with under-17 audiences (including school venues, youth-oriented comic books, top teen TV shows, and younger teen magazines).
- Encourage the auditing of ad placement to verify that advertisements are not reaching a substantial under-17 audience.
- Encourage media screening of ads for consistency with these principles.
- Provide for the associations to monitor and encourage member compliance with these policies, and to impose meaningful sanctions for noncompliance.

Id. at 54.

3. The Commission recommended that the industries encourage their members, as well as third-party retailers, to:

- Check age or require parental permission before selling or renting R-rated/M-rated/advisory-labeled products.
- Clearly and conspicuously display the ratings and advisories on packaging and in advertising, and avoid covering or obscuring them.
- Avoid sales of R-rated/M-rated/advisory-labeled products on retail Internet sites unless they use a reliable system of age verification.
- Develop guidelines for the electronic transfer of movies, music, and games.

Id. at 55.

4. The Commission recommended that the industries "expand their outreach programs to parents to facilitate informed choice and raise awareness and understanding of the ratings, content descriptors, and advisory labels." The Commission suggested that the industries specifically should:

- Clearly and conspicuously display the rating or advisory label and the descriptors in all advertising and product packaging.
- Encourage the media to include rating and labeling information in reviews. This information often is included in movie reviews, but less frequently is included in game or music reviews.
- Take additional steps to inform parents, especially by including rating and

labeling information in retail stores and on Web sites, where products can be sampled, downloaded, or purchased.

Id.

5. *Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 13, 2000); *Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000). In addition, on September 20 and 21, 2000, the Senate Judiciary Committee held a hearing on whether the entertainment industries should be given an antitrust exemption to facilitate the development of industry-wide codes of conduct restricting the marketing and sale of violent entertainment products to children. *Antitrust Law and the Marketing of Violent Entertainment to Children: Hearing Before the Senate Comm. on the Judiciary*, 106th Cong. (Sept. 20 and 21, 2000).

6. Several members of Congress also questioned whether the Commission could take law enforcement action against the practice of target marketing to children products rated or labeled as inappropriate for children or with a parental advisory. In response to those inquiries, the Commission initiated a review of whether the advertising and marketing practices documented in the Commission's Report might violate the provisions of the Federal Trade Commission Act prohibiting the use of unfair or deceptive acts or practices in commerce. After a careful review of the entertainment industry's marketing practices and an analysis of the law, the Commission concluded in November 2000 that there are a number of significant legal limitations, including substantial and unsettled constitutional questions, to effective law enforcement actions under the FTC Act. Instead, the Commission suggested that the most prompt and viable option might be for Congress to continue to encourage further, needed reforms to the self-regulatory systems. *See* Letter from Robert Pitofsky, Chairman, Federal Trade Commission, to Senator John McCain, Chairman of the Senate Comm. on Commerce, Science and Transp. (Nov. 20, 2000), *available at* www.ftc.gov/opa/2000/11/violence.htm.

7. The MPAA member studios are the Walt Disney Company, Metro-Goldwyn-Mayer, Paramount Pictures, Sony Pictures Entertainment, Twentieth Century Fox Film Corp., Universal City Studios, and Warner Bros. Dreamworks SKG – not an MPAA member – also signed on to the initiative. Motion Picture Association of America, *A Response to the FTC Report* (Sept. 26, 2000).

8. *See generally Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 13, 2000), 2000 WL 1340874; *Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000), Fed. News Serv., LEXIS, Legis Library, Hearng [sic] File.

9. National Association of Theatre Owners, *Response of the National Association of Theatre Owners to the Report and Recommendations of the Federal Trade Commission* (Nov. 2, 2000) (on file with the Commission).

10. *Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000), Fed. News Serv., LEXIS, Legis Library, Hearng [sic] File.

11. The IDSA directed the task force "to explore whether and how to define target marketing, to consider policies covering licensing of action figures, to consider possible development of general industry guidelines for marketing M rated product and to discuss potential monitoring tools [for the ESRB] to determine whether companies are improperly targeting M rated products to young users." Letter from Douglas Lowenstein, President of the IDSA, to FTC staff (Mar. 2, 2001) (on file with the Commission). The IDSA notes that its members see several difficulties in drafting such guidelines:

> Guidelines that deny company's access to outlets where there is a large population of adult users because they may also be popular with kids, raise very difficult questions. . . . Overly restrictive self regulation in this case may seriously undermine a company's ability to reach the appropriate adult market, and is a factor to weigh in considering how to define target marketing.

Id. In addition, IDSA members are concerned "about the legal implication of adoption and enforcement of guidelines, including the potential for legal actions by publishers objecting to the rating assigned to their products, or from game publication affected by publishers' decision to comply with guidelines." *Id.* Moreover, the potential for legislation broadening the FTC's power to bring actions against companies that violate the guidelines raises additional concerns, according to the IDSA. *Id.*

12. *See* Letter from Douglas Lowenstein, President, IDSA, to FTC staff (Mar. 28, 2001) (on file with the Commission). "In sum, we believe the guidelines we have adopted strike a delicate balance between setting reasonable limits, protecting free speech, and promoting parental responsibility and choice." *Id.*

13. Letter from Dr. Arthur Pober, President, ESRB, to FTC staff (Feb. 20, 2001) (on file with the Commission).

14. *See* Letter from Senator John McCain, Chairman of the Senate Commerce Committee, Ranking Member Ernest Hollings, and Senators Max Cleland and Sam Brownback, to Robert Pitofsky, Chairman, Federal Trade Commission (Jan. 22, 2001) (on file with the Commission).

15. *Id.*

16. Unlike the earlier Report, in preparing this report the Commission did not review information from individual industry members, such as internal marketing plans and marketing research data. Accordingly, it does not include the companies' express statements regarding their target audiences, nor does it include information on promotional activities such as the distribution of free passes, flyers, stickers, etc., in teen hang-outs, which the September 2000 Report revealed to be an important way to target teens.

17. The Commission contracted with a commercial advertising tracking firm, Video Monitoring Services ("VMS"), to track advertisements for rated or labeled products on television programs popular with teens and younger children. For seven weeks during December 2000 and January 2001, VMS continuously monitored eight programs that were the highest rated among teens or where teens comprised the largest percentage of the audience: *Malcolm in the Middle*, *Seventh Heaven*, *That '70s Show*, *The Simpsons*, *Titus*, *Total Request Live*, *WWF Heat*, and *WWF Smackdown*. The Commission selected these shows because they are ranked among the top shows in terms of number of teen viewers or the percentage of teen viewers of the viewing audience. All of these programs are televised before 9:00 p.m. For additional details, see Appendix A (*Data Collection Methodology and Television and Print Demographics*).

18. The shows were: *Friends*, *Seinfeld*, *Drew Carey*, *Home Improvement*, *Spin City*, *Seventh Heaven*, *Moesha*, and *The Simpsons*, as aired in Chicago, Cleveland, Dallas, Los Angeles, San Francisco, and Seattle, on selected dates from mid-December 2000 to mid-January 2001 between 4:00 and 8:00 p.m. For additional details, see Appendix A.

19. The magazines were: *DC Comics*, *Electronic Gaming Monthly*, *GamePro*, *Metal Edge*, *Right On!*, *Seventeen*, *Teen*, *Teen People*, *Thrasher*, *Tips and Tricks*, *Unofficial PlayStation Magazine*, *Vibe*, *WWF Magazine*, and *YM*. Industry marketing plans reviewed for the September 2000 Report identified ad placements in these magazines when the target audience included children under 17. The Commission reviewed ads from 23 publications in total, but to assess ad targeting the Commission focused on 14 publications with a substantial youth audience that were identified in Appendix I to the September 2000 Report. For additional details, see Appendix A.

20. *See* Appendix A. In order to assess rating practices (whether a rating or rating reason was displayed clearly and conspicuously) — but *not* to assess whether ads were targeted to children — the Commission also examined ads in issues of other publications in addition to those identified in note 19 above: *Computer Gaming World*, *Nintendo Power*, *Official SEGA Dreamcast*, *PC Gamer*, *Rolling Stone*, *Spin*, *Teen Celebrity*, *Teen Movieline*, and *The Official U.S. Playstation Magazine*.

21. In the September 2000 Report, the Commission's findings regarding television advertising were based on company media plans and other documents detailing the firms' television advertising dissemination schedules; the Commission did not independently monitor television advertising. In addition, whereas for the September 2000 Report the Commission was able to review marketing plans extending over several years, for this report the Commission examined only a small number of television programs for a short time. Therefore, the results of the monitoring conducted for this report cannot be directly compared with the September 2000 Report's findings on the companies' television advertising practices. That is, the data are not sufficient to reveal whether the level of advertising of these products on popular teen programs is more or less than it was a year or two ago. Rather, the data simply show whether R-rated movies, explicit content-labeled music, and M-rated games are currently being advertised on programs with substantial teen audiences.

22. September 2000 Report at 54.

23. *Id.*

24. Motion Picture Association of America, *A Response to the FTC Report*, Sept. 26, 2000. *See also Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000) (statement of Mel Harris, President and Chief Operating Officer of Sony Pictures Entertainment) (presenting MPAA initiatives), *available at* 2000 WL 1530870. Also, the Directors Guild of America announced its support for the creation of a self-regulatory — not government-imposed — code of conduct to address marketing of films intended for mature audiences, as well as for a universal ratings system to apply to a variety of entertainment products. David Robb, *DGA Calls for Industry Code on Marketing*, Hollywood Reporter, Sept. 15, 2001, *at* www.hollywoodreporter.com/crafts/briefs/0915.asp (visited Mar. 6, 2001).

25. *Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000), Fed. News Serv., LEXIS, Legis Library, Hearng [sic] File.

26. *Id.* MGM pledged to use the 35% audience share as a guideline, but not as an absolute. *Id.* (testimony of Chris McGurk, Vice Chairman and COO of MGM).

27. For example, Disney agreed not to run ads for such movies on entertainment programming airing before 9 p.m. Press Release, The Walt Disney Co., *The Walt Disney Company Announces Policies for Marketing Its Motion Pictures*, Sept. 12, 2000 (on file with the Commission). The Disney pledge extended to "any of its films released under the Touchstone, Hollywood Pictures and Miramax Film banners." *Id.* According to a News Corporation press release, Fox Broadcasting Company will no longer "accept advertising for R-rated films in any family programming, or in any program in which 35 percent or more of the audience is anticipated to be under 17." Press Release, News Corporation, www.newscorp.com/news/newscorpplan.html (undated) (visited Mar. 6, 2001).

The 9 p.m. cutoff is one hour earlier than the 10 p.m. cutoff used by the Federal Communications Commission for limiting the time that "indecent" programming may be broadcast on television. The FCC presumes children are in the audience between 6 a.m. and 10 p.m. and therefore prohibits "indecent" programming during that time. 47 C.F.R. § 73.3999.

28. September 2000 Report at 14.

29. *Id.* at 14-15. "Early fringe" and "prime access" times are after school and before prime-time network programming begins at 8 p.m.

30. Other data provided by VMS show that ads for at least five other movies rated R at least in part for violence were aired between 6:00 p.m. and 9:00 p.m. between October 1, 2000 and February 8, 2001 on programs that were the highest rated among teens. The movies were

Artisan's *Book of Shadows: Blair Witch 2*, Paramount's *The Gift*, and Warner Bros.' *3000 Miles to Graceland*, *Proof of Life*, and *Valentine*. For additional details, see Appendix A.

31. The Commission's monitoring of syndicated programs showing Monday through Friday that are in the top ten in terms of number of viewers aged 12 to 17 (*Friends*, *Drew Carey*, *Seinfeld*, *Home Improvement*, *Spin City*, *Moesha*, and *The Simpsons*) showed that the R-rated films *Dracula 2000*, *Hannibal*, *Proof of Life*, *Shadow of the Vampire*, *Snatch*, *The Gift*, *The Pledge*, *Traffic*, and *Valentine* were advertised on those programs on 60 occasions.

32. Based on VMS's continuous monitoring of eight network programs with a substantial youth audience for seven weeks during December 2000 and January 2001, the Commission found that three R-rated movies – *Snatch*, *Dracula 2000*, and *Traffic* – were advertised. Miramax advertised *Dracula 2000* a total of six times on *That '70s Show*, *The Simpsons*, and *Titus*. Sony Pictures aired four advertisements for *Snatch* on *WWF Heat* (two ads), *That '70s Show*, and *WWF Smackdown*. USA Films (an independent studio and not an MPAA member) aired four advertisements for *Traffic* on *WWF Heat*, *That '70s Show*, *Titus*, and *Total Request Live*. Of the 14 advertisements for these films, 10 were national advertising buys and four were "local" buys purchased only in the market monitored. The number of local buys may be expected to vary depending on the market monitored. For additional details, see Appendix A.

33. Miramax advertised *Dracula 2000* a total of six times on Fox Broadcasting Network programs *That '70s Show*, *The Simpsons*, and *Titus*.

34. Press Release, News Corporation, www.newscorp.com/news/newscorpplan.html (undated) (visited Mar. 6, 2001).

35. The ad for *Traffic* was placed by non-MPAA member USA Films.

36. *See* Appendix A.

37. There were several ads for R-rated videocassettes or DVDs. For example, MGM ran an ad in *Vibe* for *Silence of the Lambs* (rated R) and *Raging Bull* (rated R). Retailers such as netflix.com and Tower Records also advertised R-rated videocassettes or DVDs in these publications.

38. September 2000 Report at 18.

39. September 2000 Report at 15-16. Studios send completed features to theaters with one trailer physically attached; other unattached trailers are sent to the theaters with a request that they be shown with a particular feature. At the time the September 2000 Report was issued, National Association of Theatre Owners ("NATO") members were required to show the attached trailer, and had discretion (subject to pressure from studios) to play the trailers that were not attached.

40. *Marketing Violence to Children II: Hearing Before the Senate Comm. on Commerce, Science and Transp.*, 106th Cong. (Sept. 27, 2000), Fed. News Serv., LEXIS, Legis Library, Hearng [sic] File.

41. NATO's pledge extended to any trailers that are attached to the film by the studio, which would require theaters to physically detach those trailers from the film reel. NATO members also agreed not to show "red band," or restricted, trailers or trailers for films rated NC-17 before any G, PG, or PG-13 film.

42. Only one G-rated film and one PG-rated film were released nationally in the mid-January through mid-March time period during which the Commission could contract for a trailer check.

43. The trailer checking service found a trailer for one R-rated movie, Paramount's *Along Came a Spider* ("Rated R for violence and language"), showing before the G-rated feature *Recess: School's Out* at two Regal theaters in the same metropolitan area. Nine of the 17 movies for which trailers were shown before *Recess: School's Out* at the theaters checked were not yet rated. Two PG-13-rated features, Universal's *The Mummy Returns* and Buena Vista's *Just Visiting*, were also shown before *Recess: School's Out* at two theaters each.

Two R-rated features by Twentieth Century Fox (*Freddy Got Fingered* and *Say It Isn't So*) were shown before the PG-rated *See Spot Run* at the same Cinemark theater in Houston. Of the 18 films for which trailers were shown before *See Spot Run*, eight were unrated and three were rated PG-13.

The large number of trailers for films that were not yet rated suggests that the MPAA might want to consider adopting a position similar to the electronic game industry's code, which provides that ads for games not yet rated should, to the extent practical, only be placed in media whose audience would be suitable for the game's content. *See infra* note 105.

44. Trailers for *Enemy at the Gates* ("Rated R for strong graphic war violence and some sexuality"), *Freddy Got Fingered* ("Rated R for crude sexual and bizarre humor, and for strong language"), *House of 1000 Corpses* (not yet rated but expected to receive an NC-17 rating due to graphic violence), *Say It Isn't So* ("Rated R for strong sexual content, crude humor and language"), and *Tomcats* ("Rated R for strong sexual content including dialogue and for language") were among those shown before *Monkeybone*.

45. Two Regal Theaters outside of Philadelphia showed trailers for *Enemy at the Gates* ("Rated R for strong graphic war violence and some sexuality") before *Monkeybone*. An AMC theater outside Atlanta showed a trailer for *House of 1000 Corpses* (which is not yet rated but which Universal Pictures reportedly announced it would not distribute because it expects the film to receive an NC-17 rating due to its graphic violent content) before *Monkeybone*. *See* Patrick Goldstein, *Horror Flick Scares Off Universal*, L.A. Times, Mar. 6, 2001, *at* www.latimes.com/print/calendar/20010306/t000019674.html (visited Mar. 8, 2001); www.robzombie.com/h1kcrelease.html (visited Mar. 7, 2001).

46. *See* Appendix A.

47. Robert W. Welkos, *Studios Cut Back Marketing of Violent Movies to Teens*, L.A. Times, Dec. 22, 2000, www.latimes.com/news/state/updates/lat_drac001222.htm (visited Mar. 2, 2001).

48. *Id.* In addition, Miramax did not create a Web site for the film or a music video for the soundtrack. As noted above, however, television ad monitoring showed that *Dracula 2000* was advertised on a number of television programs with large teen audiences.

49. *Id.*

50. *Id.* Another press account suggests that these types of marketing curbs may have hurt ticket sales for certain films. However, the same article points out that other factors may also be at play, and one of the films mentioned in the article as avoiding marketing to youth, *Hannibal*, has been a huge box office success. Sharon Waxman, *Marketing Curb on Gory Films May Slash Profits*, Wash. Post, Jan. 13, 2001, at A1, www.washingtonpost.com/wp-dyn/articles/A55171-2001Jan12.html (visited Mar. 1, 2001). Another press account reports that studios have begun to include rating reasons in radio ads as well. Rachel Uslan, *Does the Ad Say It All?*, L.A. Times, Mar. 11, 2001, www.latimes.com/news/asection/20010311/t000021254.html (visited Mar. 12, 2001).

51. Motion Picture Association of America, *A Response to the FTC Report*, Sept. 26, 2000. In addition, three studios — Disney, MGM, and Warner Bros. — also promised not to advertise R-rated films on children's Web sites. Greg Schneider, *Studios Make Limited Vows on Violence*, Wash. Post, Sept. 23, 2000, www.ncvc.org/flash/sep00.htm (visited Mar. 12, 2001).

52. Motion Picture Association of America, *A Response to the FTC Report*, Sept. 26, 2000.

53. For a description of the syndicated programs reviewed, *see supra* note 18 and Appendix A. In the course of its review of television ads generally — as opposed to the review of syndicated programs — the Commission did find one television ad with no rating (or rating pending) information, for Paramount Pictures' PG-13 film *Save the Last Dance* on MTV's *Total Request Live*.

54. In 35 of 60 ads for movies rated R for violence, the rating reasons were unreadable or difficult to read.

55. Specifically, 226 of 401 ads for films rated PG-13 for violence either did not include rating reasons or provided rating reasons that were difficult to read.

56. The Commission reviewed all of the magazines identified in notes 19 and 20, *supra*.

57. The Commission reviewed ads in the following newspapers with a general circulation for the dates shown: *Atlanta Journal-Constitution* (1/5/01, 1/12/01, 1/26/01); *Chicago Sun-Times* (12/15/00, 12/22/00, 1/5/01, 1/12/01, 1/19/01, 1/26/01); *Chicago Tribune* (12/15/00, 12/22/00, 12/29/00, 1/5/01, 1/19/01, 1/26/01); *Dallas Morning News* (12/15/00, 12/22/00, 12, 29/00, 1/5/01, 1/12/01, 1/19/01); *Los Angeles Times* (12/15/00, 12/29/00, 1/5/01); *New York Times*

(12/15/00, 12/22/00, 12/29/00, 1/5/01, 1/12/01, 1/19/01, 1/26/01); *The [Cleveland] Plain Dealer* (12/8/00, 12/15/00, 12/22/00, 12/29/00, 1/5/01, 1/12/01, 1/19/01, 1/26/01); *Seattle Post-Intelligencer* (12/15/00-12/21/00, 12/22/00-12/28/00, 1/5/01-1/11/01, 1/19/01-1/25/01); *Seattle Times* (12/15/00, 12/29/00, 1/5/01, 1/12/01, 1/19/01); *Washington Post* (12/15/00, 12/22/00, 12/29/00, 1/5/01, 1/12/01, 1/19/01, 1/26/01).

58. All but six of 1006 ads reviewed contained rating reasons.

The Commission also reviewed 29 ads for R- and PG-13-rated films for sale on videocassette or DVD in the same magazines and newspapers. Some of these ads presented several films for sale, and other ads focused on a single film. The advertisers include retailers, as well as studios. Of these ads, 13 did not provide the films' ratings at all. In other cases, the ratings were displayed only on images of the package cover art, making them difficult to see, or were present on some videos but not others. Rating reasons were provided in five of the 29 ads. Notably, Universal Pictures provided both the rating — separate from the cover art and thus easier to read — and rating reasons in an ad for home videos. Sony's Columbia Tri-Star Pictures also provided rating information for each film separate from the cover art in an advertisement for several DVDs.

59. *See* Rachel Uslan, *Does the Ad Say It All?*, L.A. Times, Mar. 11, 2001, www.latimes.com/news/asection/20010311/t000021254.html (visited Mar. 12, 2001):

> Graphic Orb, a motion picture advertising firm, has been told by its clients -- including Universal, MGM and Columbia -- "to be big and legible so the MPAA has nothing to take issue with," said Laura Noble, an account executive. But on some ads, like the ones for USA Films' "Traffic" and Paramount Classics' "Company Man," the explanations run in a type smaller than both the stock tables and the sports agate in the *Los Angeles Times*.

60. In most of the ads, the rating reason is shorter than the statement "For rating reasons, go to www.filmratings.com" that studios began including in some ads in 2000 in lieu of providing the rating reason itself.

61. The films selected were all released after October 1, 2000.

62. Thirty of the 35 sites (86%) displayed the film's rating, while 25 provided the film's rating reason. By contrast, in the December 1999 review of Web sites, 89% (41 of 46) of sites contained the movie's rating, and none provided the rating reason.

63. For example, the official home page of Universal's *The Watcher*, www.thewatchermovie.com, presented the viewer with a large pop-up window that contained the rating and rating reason. This pop-up window effectively obscured the home page itself until the viewer closed that window. Other sites displayed the ratings particularly prominently. For example, the official home page for MGM's *Original Sin*, www.mgm.com/originalsin.com, provided very large and readable rating information. The official site for Twentieth Century Fox's *Quills*, www.foxsearchlight.com/quills/options.htm, provided a rating icon and rating

reason in large, contrasting print (a second icon and rating reason was also displayed, but this one was too small to read unless the viewer placed the cursor over the rating in order to display a readable version of it). The official site for *Quills* did include another page that displayed clear and conspicuous ratings information, but this page appeared in a window behind the window containing the heart of the site.

64. When checked in January 2001, the official home pages of Lion Gate Films' *Shadow of the Vampire* and USA Films' *Series 7: The Contender*, for example, provided no rating information at all. The *Shadow of the Vampire* site, when rechecked on February 21, 2001, did display the rating icon and rating reason and link to other rating information. The home page for *Series 7: The Contender* was modified after the site was brought to the attention of the MPAA, and the updated site currently provides rating information.

65. Eighteen sites linked to the MPAA Web site, www.mpaa.org; 26 provided a hyperlink to the MPAA's informational site, www.filmratings.com; and 26 sites linked to www.parentalguide.org. Eighteen sites linked to all three sites. By way of comparison, in 1999 no site linked to other sites with rating information.

66. Two of the sites reviewed for this report took the additional step of providing a warning that the site contained material, or dealt with a subject matter, inappropriate for children. The *Quills* Web site provided a warning that a portion of the site contained adult content. However, the official site for the New Line film *Blow*, www.getsomeblow.com, provided a mock "warning": "WARNING. Parental discretion is advised. This site will be objectionable for younger viewers. This site contains SEX, DRUGS, & ROCK N' ROLL." Rather than serve as a true mechanism for informing consumers about content, the "warning" appears intended to titillate the viewer's interest in the film.

In addition, six sites asked the visitor to disclose his or her age when the visitor attempts to register for the studio's online newsletter. The visitor is asked to verify that he or she is over the age of 13 when registering for the newsletter, apparently in order to comply with the Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501-6505 (1999). That Act imposes certain obligations on Web site operators that collect personal information from children under the age of 13 in order to protect children's privacy and security online.

67. National Association of Theatre Owners, *Response of the National Association of Theatre Owners to the Report and Recommendations of the Federal Trade Commission* (Nov. 2, 2000) (on file with the Commission). The AMC theater chain resigned from NATO in late March 2001, but was a NATO member throughout the period that the Commission collected information for this report and is included as a NATO member for purposes of this report.

68. Web sites that do not provide a film's rating reason but do provide a link to an educational Web site also allow a consumer to find the rating reason by clicking on the hyperlink to the educational Web site and inputting a search in the film database. Nevertheless, the Commission did not count such sites as providing the rating reason because of the extra steps required to

obtain it. In addition to the rating reason database, the educational Web sites also include detailed explanations of the different movie ratings.

69. Through moviefone.com, the site provides an opportunity to purchase tickets, but if one attempts to purchase a child's reduced price ticket for an R-rated feature, a message appears: "Sorry, children under 17 will not be permitted into an R Rated feature without an adult."

70. *See* Appendix H to the September 2000 Report. The survey also looked at sales of M-rated games and explicit-content labeled music.

71. The same five retailers were examined in both reviews, except that Bestbuy.com replaced Cdnow.com.

72. Though the explicit content label makes no reference to age, common sense suggests that the "parental advisory" is meant for the parents of minor children.

73. The Commission's Report found that the marketing plans for all 55 recordings for which the Commission obtained information detailed plans to market the recordings in media that would reach a majority or a substantial percentage of teens. The plans for 15 of the 55 explicit content recordings expressly identified teenagers as part of their target audience. *See* September 2000 Report Section Section V.

74. www.riaa.com/Parents-Advisory-5.cfm.

75. *See* Letter from Mitch Glazier, Senior V.P., Recording Industry Ass'n of America, to FTC staff (undated but faxed Mar. 28, 2001) [hereinafter *RIAA March 2001 Letter*].

76. Thus, unlike the movie and game industry associations, the RIAA continues to focus only on the benefits of the current labeling system, which does not address targeting explicit content recordings to children. In addition, none of the individual recording companies has indicated that it would voluntarily cease marketing to children, even though several of these companies (Warner Bros., Sony, and Universal) have announced participation in the industry-wide (and, in the case of Warner Bros., company-specific) anti-targeting initiatives regarding the marketing of R-rated violent films.

The National Association of Recording Merchandisers ("NARM") informed the Commission that the association supported the (now-rescinded) RIAA guidelines that restricted advertising for explicit content recordings in media targeting those aged 16 and below, but does not support any sanctions for failure to comply with a voluntary system. Letter from Pamela Horovitz, President, NARM, to FTC staff (Mar. 21, 2001) at 5 [hereinafter *NARM March 2001 Letter*].

77. The Commission monitored advertising on eight television programs with substantial teen audiences (MTV: *Total Request Live* and *WWF Heat*; Fox: *The Simpsons, Malcolm in the Middle, That '70s Show, Titus*; WB: *7th Heaven*; UPN: *WWF Smackdown*). *See supra* note 17.

78. The VMS data show that 21 ads for explicit content recordings ran during the seven weeks of these MTV programs.

79. VMS data for the first airing of advertisements for explicit-content recordings showed that BMG ran ads for explicit content recordings on *WWF Smackdown* and *Top 10 Live*; EMI ran ads for explicit content recordings on *Top 10 Live*; Sony Music ran ads for explicit content recordings on *Total Request Live*, *Top 10 Live*, and *WWF Smackdown*; UMG ran ads for explicit content recordings on *WWF Smackdown*, *Top 10 Live*, *Jackass*, and *Total Request Live*; and WEA ran ads for explicit content recordings on *Top 10 Live*. *See* Appendix A.

80. The Commission examined advertisements for recordings placed in *Metal Edge* (12/00 and 1 - 3/01), *Right On!* (12/00 and 1 - 3/01), *Seventeen* (1 - 3/01), *Teen People* (1 - 3/01), *Thrasher* (12/00 and 2 - 3/01), and *Vibe* (12/00 and 1 - 3/01).

81. No ads for explicit content recordings were found in the issues of *Seventeen* and *Teen People* reviewed. BMG ran 20 ads in *Right On!*, *Thrasher*, and *Vibe*. EMI ran 15 ads in *Metal Edge*, *Right On!*, *Thrasher*, and *Vibe*. Sony ran 10 ads in *Metal Edge* and *Vibe*. UMG ran 25 ads in *Metal Edge*, *Right On!*, *Thrasher*, and *Vibe*. WEA ran 7 ads in *Metal Edge* and *Vibe*.

82. *See* September 2000 Report Section IV.

83. *See* RIAA March 2001 Letter at 4. In addition, the NARM supported formulating a recommendation for the inclusion of a standardized parental advisory in radio advertising for explicit content recordings. *See* NARM March 2001 Letter at 2.

84. Thus, because the companies' advertising practices may be just beginning to change, the Commission would expect to see the clear advertising disclosures, now recommended by the RIAA, in the follow-up report the Commission expects to issue in Fall 2001.

85. The RIAA March 2001 Letter provides three reasons why providing lyrics may be difficult or undesirable. First, certain artists may object to providing lyrics to their works because it extracts the words from their musical content and "severely distorts their work and is not indicative of the total expression." Second, it may be "counterproductive to collect all 'labeled' lyrics for presentation on a single web site (such as parentalguide.org)" as children may gain access to such lyrics. Third, such lyrics may already be available on other Web sites, such as the artist or publisher Web site. However, the RIAA states that it will "continue to discuss with music publishers the ways in which lyrics can be made more readily available to parents in a manner that respects artists and avoids unintentional results." RIAA March 2001 Letter at 2-3. The NARM also reports that it is involved in the discussions about directing parents to lyrics for explicit content recordings, possibly via the parentalguide.org Web site. NARM March 2001 Letter at 4.

86. Along with the magazine issues described in *supra* note 19, the Commission also reviewed the January through March 2001 issues of *Spin* and four issues of *Rolling Stone* (December 2000 and January, February, and March 2001).

87.

Recording Company Web Site Surf

	YES		NO	
	#	%	#	%
Does the site contain album cover art?	38	95%	2	5%
Does the advisory appear on the cover art? (of 38)	15	40%	23	61%
Is the advisory readable? (of 15)	2	13%	13	87%
Is there other clear & conspicuous information about explicit content?	18	45%	22	55%
Are there lyrics?	15	38%	25	63%
Are there audio clips?	32	80%	8	20%
Are there video clips?	29	73%	11	28%
Is the record offered for sale?	23	58%	17	43%
Is there a link to www.parentalguide.org?	0	0%	40	100%
Are there age restrictions on listening or purchase?	0	0%	40	100%

88. The Commission selected the Web sites based on a listing of the top 200 albums as ranked by Billboard on January 13, 2001. The official site was either the artist's or band's site or a recording company site.

89. The RIAA states that it has clarified to its members that "the parental advisory logo and any accompanying language indicating that an edited version is available used in consumer print advertising should be 'clear and conspicuous'." RIAA March 2001 Letter at 3.

90. Although several recording company sites provide an advisory, most of the online advisories are provided by retail sites. Many of the recording sites surfed allowed a consumer to purchase an album by linking directly to a specific page on a retail site. It is these retail Web sites that usually contain the improved disclosures.

91. These sites should be able to come into compliance in the very near future because revisions to online disclosures can be made almost immediately (unlike magazine ads, which require a longer lead time between changing ad copy and publication date). The NARM now indicates it will discuss promoting the parentalguide.org Web site and encouraging links to this site on retailers' Web sites and on in-store promotions. NARM March 2001 Letter at 2-3.

92. The NARM has informed the Commission that the retailers rely on the record companies to provide them with graphics for retail ads that include the parental advisory, and that the music

retail association expects "that increasing numbers of ads for new releases will contain the Parental Advisory," while ads for already-released recordings "will take longer to bring into compliance." *Id.* at 2. The NARM also stresses that a "comprehensive effort" is underway to encourage its members to display the parental advisory consistently on their Web sites. *Id.* at 2-3.

93.

Music Retailer Web Site Surf

	Amazon	Best Buy	CDNow	Sam Goody	Tower Records
Does the site contain album cover art?	5 of 5	5 of 5	5 of 5	5 of 5	5 of 5
Does the advisory appear on the cover art?	3 of 5	1 of 5	3 of 5	2 of 5	4 of 5
Is the advisory readable?	1 of 3	0 of 1	0 of 3	0 of 2	0 of 4
	1 other partially readable only		2 partially readable	1 partially readable	3 partially readable
Are there audio clips?	5 of 5	0 of 5	5 of 5	0 of 5	5 of 5
Are there video clips?	0 of 5	0 of 5	0 of 5	0 of 5	0 of 5
Is there other clear and conspicuous information about explicit content?	5 of 5	5 of 5	3 of 5	0 of 5	3 of 5
	"explicit lyrics" and "PA"**	"parental advisory"	"explicit," "explicit version," and "edited"	only "clean" version noted	"explicit," "edited," and "PA"**
Are disclosures provided throughout purchasing process?	5 of 5	0 of 5	0 of 5	0 of 5	0 of 5
Is there a link to www.parentalguide.org?	0 of 5	0 of 5	0 of 5	0 of 5	0 of 5
Are there age restrictions on listening or purchase?	0 of 5	0 of 5	0 of 5	0 of 5	0 of 5

*readable if consumer chooses to enlarge the image of the cover art. Otherwise the image is visible but not readable.
** The letters "PA" were not counted as an understandable disclosure of explicit content.

94. Best Buy provided the disclosure "parental advisory" near the picture of the cover art, but not throughout the purchasing process. CDNow at times used the terms "explicit" and "edited" next to the album cover art, but in other cases either provided no information regarding an album's explicit content or provided this information buried several screens down, after the consumer could purchase, read about, and listen to clips from the album. Tower Records would

at times use the disclosure "explicit" but more often provided the cryptic abbreviation "PA" throughout the purchasing process.

95. The Commission's December 1999 surf of 39 artist Web sites or Web pages showed that four of the 39 sites examined provided the advisory label on the recording cover art in readable form and that 14 of the 39 sites provided other information about an album's explicit content.

96. *See* RIAA March 2001 Letter at 4.

97. These core violations of the industry's own self-regulatory code were evidenced foremost by internal company marketing documents for M-rated games that expressly targeted children (typically boys) under age 17. The marketing documents provided to the Commission indicated that at least 70% of the violent M-rated games studied were targeted to children under 17. Fifty-one percent had at least one marketing or media plan or creative brief that expressly included children under 17 in the game's target audience. The incidence of express targeting was much higher for console games (72%) than for personal computer games (26%).

98. *See Marketing Violence to Children: Hearing Before the Senate Comm. on Commerce, Science, and Transp.*, 106th Cong. (Sept. 13, 2000) (statement of Douglas Lowenstein, President, Interactive Digital Software Ass'n [hereinafter *IDSA testimony*]), *available at* 2000 WL 1340874, at *68. Mr. Lowenstein stated:

> We agree that placing an ad for a Mature rated product in a publication that is clearly and squarely aimed at young readers, such as Nickelodeon or SI for Kids, is a violation of our standards. But we reject the FTC's operating assumption that ads in publications that happen to have some noteworthy percentage of young readers, but a substantial and perhaps even dominant share of older readers and users, is inappropriate. We do not think it is unreasonable for a company to place an ad for a game in GamePro magazine where the average age of the readers is 18. We do not feel it is inappropriate to place an M ad in Electronic Gaming Monthly where, according to the magazine, 59% of its readers are 17 and over.

See also statements by Peter Moore, President and C.O.O., Sega of America, and Gregory Fischbach, President and C.E.O., Acclaim Entertainment. *Id.* at 78, 102.

99. The Guidelines seek to explain the different percentages used for print and television advertising:

> **Note:** The distinction between the 45% under 17 audience allowed for print publications and the 35% under 17 audience allowed for TV advertising recognizes that the most effective and in some cases the **only** cost-effective way to reach **adult game enthusiasts** is through magazines that have a substantial adult readership along with some younger readers. The 35% demographic for TV advertising is utilized because TV is a mass medium and does not present the same issues when seeking to reach an adult audience.

See Guidelines Addressing Marketing of Mature Rated Games to Persons Under 17, attached to Letter from Douglas Lowenstein, President, IDSA, to FTC staff (Mar. 28, 2001) [hereinafter *M-*

rated Game Ad Guides] (on file with the Commission).

The Guidelines also set a 45% under-17 audience limit for advertising on Internet sites, and oblige game publishers who license third parties to sell action figures and other products based on their M-rated games to require that packaging for the products include the following statement: "This [state item] is based on a Mature rated video game." *Id.*

100. The Commission contracted with VMS to monitor advertising on eight television programs with substantial teen audiences (MTV: *Total Request Live* and *WWF Heat*; Fox: *The Simpsons, Malcolm in the Middle, That '70s Show, Titus*; WB: *7th Heaven*; UPN: *WWF Smackdown*). *See* Appendix A.

101. A separate report received from VMS verifies that one M-rated game — THQ's *Evil Dead* — was being advertised on television during the period monitored. At least one ad for that game was placed during the week of December 21, 2000 on an early morning MTV show that likely has a substantial teen audience.

102. An October 1999 article in *Newsweek* included *GamePro* and *Electronic Gaming Monthly* in a list of the 10 most-read magazines by 12- to 15-year-olds. Barbara Kantrowitz & Pat Wingert, *The Truth About Tweens*, Newsweek, Oct. 18, 1999, at 62. The editors of *GamePro* recently described its readership this way:

> [A]nd here's how the age range for you crazy "kids" breaks down according to *GamePro's* last reader survey: 33 percent, age 18 and older; 58 percent, age 12-17; and 9 percent, under age 12. Nine percent of half-a-million readers is nothing to sneeze at . . .

Editor's Letter: Sharpe and Savage, GamePro, Nov. 2000, at 20.

103. In response to a recent inquiry from the Commission, *GamePro* indicated that 58% of its readership is age 16 or younger. In response to contacts by the IDSA, *Electronic Gaming Monthly* indicated that 41% of its readership is 16 or younger. *See* IDSA testimony, *supra* note 98. M-rated games are classified as suitable for those 17 and over. Although the magazines typically break out their demographics by those 17 and under, demographic information showing high under-18 audiences should also be a concern for game companies seeking to avoid exposing their ads to large young teen audiences.

104. In preparing the chart, Rating Pending ("RP") ads were included in the rating category that the game later received. The IDSA's Advertising Code of Conduct ("Adcode") provides that RP ads should "to the extent practical" be placed "only in publications . . . whose audiences would be appropriate for the content portrayed in the title." Adcode (on file with the Commission) at V.D. The chart does not include 17 ads for games that as of March 2001 had not yet received their final rating.

105. Six of those eight companies had been contacted by the Commission for the September 2000 report.

106. Eidos has also placed two ads for *Legacy of Kain, Soul Reaver 2* in both *GamePro* and *Electronic Gaming Monthly*, using the RP (Rating Pending) designation since the game has not yet been rated by ESRB. The prequel to this game, *Legacy of Kain, Soul Reaver*, is rated M.

107. The ad in *GamePro* for Infograme's Unreal Tournament (Rated M, Animated Violence, Animated Blood and Gore) featured a "Head Blow'd Up Repair Kit."

108. All of the ads were for M-rated games that had a descriptor indicating violent content.

109. The April issue of *Electronic Gaming Monthly* carried four advertisements for M-rated games. The Preamble to the new M-rated Game Ad Guides, which have not yet gone into effect, expressly notes that industry members are free to adopt stricter guidelines for their own marketing practices. *See* M-rated Game Ad Guides, *supra* note 99.

110. Adcode at VII.A.

111. The Commission did not review the March 2001 issue of *PC Gamer* and *Computer Gaming World*.

112. These ads either: a) displayed no rating icon at all; b) displayed no descriptors; c) left off a descriptor assigned to the game; d) changed the wording of the descriptor in a way that understates the level of violence, sex or bad language in the game; or e) for RP ads, left off the ESRB required box containing the phone number and Web site address for the ESRB to check if the game had subsequently received a rating. ESRB regulations do not require advertisements for multiple titles to include descriptors (although the Commission recommends that all ads display both the rating and the descriptors). Those ads were counted as compliant if a properly sized rating icon appeared in the ad.

113. Also included in this category were instances where the wording of the descriptor was changed from what ESRB assigned the game, but the change did not appear to understate the level of violence, sex or bad language in the game.

114. Agetec, Capcom, Eidos, Electronic Arts, Gathering of Developers, Hasbro, InfoBank, Infogrames, Innerloop, Interplay, LucasArts, Microsoft, N'Lightening, Rockstar, Sega, ShoLodge, Sierra, Sony Computer Entertainment, Tecmo, THQ, and Westwood Studios. These 22 companies failed to include the required rating information in a total of 62 ads over the four-month period.

115. Agetec (5), Gathering of Developers (6), Infogrames (4), Interplay (4), Microsoft (4), and Sega (5).

116. This was a ShoLodge ad for *Dark Ore*.

117. One Best Buy ad placed in the February 2001 issue of *Electronic Gaming Monthly* promoted Capcom's M-rated *Resident Evil* games, offering a $5 off coupon. It used the

following headline, "WASTE Zombies. SAVE Money." The phrase, "All titles shown are mature rated," appeared in small print. It is not possible to tell whether this promotion was a co-op ad with the game manufacturer.

118. Chips & Bits mail-order ads feature hundreds of games. No rating information is provided for most of the games listed in these two-page ads. For a few games, the ads display the games' cover art, which usually shows the ESRB rating icon.

119. Adcode at VII.A. The required voice-over, "*Rated M for Mature*," applies to television spots longer than 15 seconds. For spots 15 seconds or shorter, the required voice-over is shortened to "*Rated M*." ESRB requires that the rating icon be 22 scan lines in size.

120. Adcode at VII.B, D. Online stores run by the game publisher must include the rating icon *and* content descriptors on the page where game information, *e.g.*, price, is provided.

121. Adcode at VIII.C.

122. In addition, the Commission reviewed the sites of five game developers (all non-IDSA members). None of these sites displayed the game's rating anywhere on the site. That review highlights an apparent weakness of the Adcode in that it covers only the company that submits a game to the ESRB for rating; typically the game publisher. Accordingly, game developers, who generally do not submit games for rating, can promote and sell their games online outside the restrictions of the Adcode. The Commission did not look at developer sites for this report.

123. In a smaller review conducted in May 2000, one site from each of the 18 companies was randomly revisited to determine if compliance had improved since the Adcode was revised effective January 2000. Only one company had made changes to comply with the online Adcode.

124. Some displayed the rating only on the cover art, while others buried the rating in text describing the game; still others only displayed the rating at the point of purchase.

125. Only six of the sites displayed the content descriptor in a way that would be noticeable to visitors. For example, on some sites visitors will only see the content descriptor if they place the mouse over the rating icon or the ESRB icon, while other sites distanced the descriptors from the easily identifiable ESRB icon.

126. www.tecmoinc.com/deception.htm (visited Jan. 22, 2001).

127. www.capcom.com/onimusha_teaser.htm (visited Jan. 25, 2001).

128. www.turok.com/turok3/index.html (visited Jan. 25, 2001).

129. Sierra's *Gunman Chronicles* displays the game's ESRB rating only at the point of purchase, fails to use the ESRB's easily recognizable rating icon, and does not use the word Mature at all. www.sierrastudios.com/games/gunman/ (visited Jan. 23, 2001). The Web site for Infogrames'

Koudelka contains the rating icon on the game's cover art and renders it almost microscopic in size. www.koudelka-thegame.com (visited Jan. 24, 2001). Electronic Arts' *Alice* appears to downplay the significance of a mature rating. The warning states, "Due to its collection of certifiable characters, its challenging environments, and its furious, nearly always terminal (to some) action, American McGee's Alice is rated 'M' for Mature." www.alice.ea.com/main.html (visited Jan. 22, 2001). *Alice's* content descriptors indicate that it is rated M for "Animated Violence" and "Animated Blood and Gore."

130. Some sites that permit visitors to access game clips and demos for violent M-rated games appear to downplay the violent nature of the clip. For example, Acclaim's *Turok 3* site "warns" visitors: "We've got some more QuickTimes for you, but they're pretty gory, so we've decided to keep them on a second page to protect our children from being traumatized. Click through if you're 17 or older." While this message ensures that younger surfers (and parents, if they are monitoring their child's use of the Internet) know what type of content they are getting before they download it, the warning and the link itself – "Take me to the Gore" – appear to make light of the parental advisory notion and may serve to heighten interest. www.turok.com/turok3/index.html (visited Jan. 25, 2001).

131. *See, e.g.*, Electronic Arts' *Undying*, www.undying.ea.com (visited Jan. 22, 2001). Sony's *Syphon Filter 2* placed the content descriptors at the bottom of the page, below the "screen break," while the ESRB icon was at the top of the page. www.scea.com/games/categories/actionadvent/syphon2/ (visited Jan. 25, 2001).

132. Very few of the sites, seven of 40, provided any additional advisory concerning the content of the site itself. Two sites cautioned the visitor that the Web site contains adult content; four sites warned the visitor that the trailer or demo contains material not suited for children; one site cautioned potential purchasers with a pop-up window at the point of purchase; and another site advised the visitor that only adults over the age of 18 could participate in an activity related to the game. Only six of the 40 sites provided a hyperlink to ESRB's Web site.

133. *See, e.g.*, Electronic Arts ordering page for *Alice*, www.ea.com (visited Jan. 22, 2001).

134. Because availability of the games differed across the six retailers' sites, the Commission examined at least six games per site from the following list: *Diablo II*, *Resident Evil: Code Veronica*, *Quake III: Arena*, *Eternal Darkness*, *Parasite Eve II*, *Turok 3: Shadow of Oblivion*, *Half Life: Counter Strike*, *Fear Effect 2: Retro Helix*, and *Metal Gear Solid*.

135. According to the Interactive Entertainment Merchants Association ("IEMA"), which represents 19 of the top 20 retail companies in the video and computer gaming sector (K-B Toys is not a member), all member companies are required to make their best efforts to display educational information about the ESRB system, and are "encouraged" to enforce the rating system.

The IDSA and the ESRB have asked retailers to adopt programs that restrict children's access to M-rated games, such as the ESRB's "Commitment to Parents" program where retailers

promise to "make their best efforts not to sell games rated 'M' to children under age seventeen." The ESRB notes that seven retailers have adopted the "Commitment to Parents" program: Babbages, Electronics Boutique, Funcoland (owned by Babbages), Kmart, Hastings, ShopKo, and Toys "R" Us.

It remains to be seen how these retailers implement such restrictive sale policies. The undercover shopper survey of electronic game retailers conducted for the Commission's September 2000 Report found that children ages 13-16 were able to purchase M-rated games at 85% of the 380 stores visited. Even at the four retailers that had adopted the "Commitment to Parents" program at the time of the Commission's shop, underaged shoppers were able to purchase an M-rated game 81% of the time.

136. Outpost.com displays the Mature rating for two of the six games surveyed, and then only on the box art that is too small to read or is inconspicuously located at the bottom of the Web page.

137. The Commission gave credit to online retailers if they displayed a product's content descriptors anywhere on the site. Two of the retailers did not display content descriptors for any of the games surveyed, and three displayed content descriptors for only a selection of the games. For example, a visitor can view the descriptors for *Turok 3: Shadow of Oblivion* on the Express.com site, but only if the visitor knows to click on the cover art for the game displayed on the product information page. www.express.com/consumer/products_games_fr.asp?PRODUCTNUMBER=19546 (visited Jan. 26, 2001). While Amazon.com displayed content descriptors for a majority (four of six) of the games checked, the site applies its own content descriptors in lieu of the official descriptors provided by the ESRB. Amazon.com's content descriptors closely resembled the ESRB descriptors but were not identical. None of the retailers provided any mechanism for age verification, but a potential purchaser has to provide a credit card number to purchase a game, reducing the likelihood that unsupervised children would be able to buy these games online. And although none of the sites provided a link to rating information at the ESRB Web site, two of the retailers, EBWorld.com and Amazon.com, give detailed information about the ESRB ratings on their own sites.

138. For Toys "R" Us, the Commission looked at practices involving seven games (two were unavailable at this retailer's site). For five of the seven games — *Diablo II, Metal Gear Solid, Quake III: Arena, Turok 3: Shadow of Oblivion, and Half Life: Counter Strike* — the ToysRUs.com name was displayed together with Amazon.com at the top of the information page for the game. For the other two, only Amazon.com's name was displayed.

139. The information pages for the five games that are branded with both Amazon.com's and ToysRUs.com's names do not display any content descriptors. The two games branded solely with Amazon.com's name do display content descriptors created by Amazon.com.

140. Amazon.com's own site contains the same caution on the information page for each M-rated game.

The Commission purchased an M-rated game, *Diablo II* (published by Blizzard Entertainment) directly from ToysRUs.com. Unlike the practice at Toys "R" Us bricks-and-mortar stores, *see* September 2000 Report text accompanying note 304, online Toys "R" Us did not ask the purchaser's age, require parental consent, or confirm that the buyer knows he or she is purchasing an M-rated game. Moreover, when the game arrived, its packaging did not display the game's content descriptors (Animated Violence and Animated Blood & Gore) on the back of the box as required by the ESRB, although it did display the M-rated icon on the front of box.

141. The Commission's earlier review for the September 2000 report found that at least 16 companies placed five or more ads without any rating information, with two companies each placing at least 33 ads without any rating information. The review also found that in the February through the June 2000 magazine issues, at least 13 companies had placed five or more ads without descriptors, despite the new IDSA requirement, beginning in February 2000, to include descriptors in print ads.

APPENDIX A: DATA COLLECTION METHODOLOGY AND TELEVISION AND PRINT DEMOGRAPHICS

This Appendix describes the media monitoring the Commission undertook to gather the data for this report. It also sets out demographic data for the audiences for the television programs and publications discussed in the report. In requesting this report, the Senate Commerce Committee asked that the Commission examine whether violent R-rated movies, explicit-content labeled music, and M-rated video games are advertised in "popular teen media," and whether rating information is included in the advertising.

I. SELECTION OF POPULAR TEEN MEDIA

In determining which popular teen media to review, the Commission focused primarily on the television programs and magazines that the industry marketing plans reviewed for the September 2000 Report indicated were used when the target audience included children under 17. For example, the internal marketing plans reviewed for the September 2000 Report revealed that certain programs were popular advertising outlets for movie studios trying to target children. These programs included those in the top 25 teen shows according to Nielsen ratings (*i.e.*, the programs drawing the largest teen audience); those ranked as the "favorite" with the under-17 age group in opinion polls; and those airing during the after-school and early evening hours that the media plans indicated were the most effective time to reach children aged 12 to 17.[1]

For this report, therefore, the Commission reviewed ad placement on the programs highest rated with teens and airing during the time of day the companies previously used to target teens. For magazines, the Commission reviewed the same magazines that the industry marketing plans reviewed for the September 2000 Report revealed were used when the industry's target audience included children under 17. These magazines have a readership that is between 40% and 80% under age 18.

Following the Commission's September 2000 Report, several entertainment industry members expressed disagreement with the criteria used to judge which media have a substantial youth audience. For example, some industry members criticized the Commission's characterization of television programs as having a substantial youth audience when their

percentage of viewers under 17 was under 25%, and advocated 35% under 17 as a more appropriate threshold. However, the industry marketing plans reviewed for the September 2000 Report showed that companies who wanted to reach teen audiences did so by advertising widely and heavily on programs whose audience was less than 35% under 17.[2] Indeed, Nielsen data indicate that few of the programs most popular with teens garner an audience that is 35% or more under 17. Only three of eleven programs that marketing plans reviewed for the September 2000 Report revealed were outlets used to reach teens had a youth audience greater than 35% under 18.[3] Even shows with 22% under-17 audiences were characterized by marketing plans as "youth-targeted."[4] These shows reach millions of teens and are ranked by Nielsen as among the top teen programs. Accordingly, to determine which television programs to review for this report, the Commission focused on the same programs airing during the same time of day that industry marketing plans previously indicated were used when targeting teens, even if the percentage of the audience under 17 is less than 35%.

The electronic game industry similarly has questioned whether advertising M-rated games in game enthusiast magazines with a substantial or even majority under-17 readership constitutes inappropriate targeting of children under 17. The Commission acknowledges that game enthusiast magazines are a natural venue for advertising games, but some of these magazines have many times the number of young readers they would have if their readership mirrored the population at large. Indeed, the editor of one such magazine described it as a "male-teen magazine."[5] The Commission believes that such magazines are appropriately characterized as popular with children under 17 and as having a substantial under-17 audience.

II. POPULAR TELEVISION SHOWS AMONG TEENAGERS

The Commission reviewed advertising that occurred in December 2000 and January 2001 on network and cable television, including shows in syndication, in the after-school and early prime-time slots when children under 17 are most likely to be watching television. The Commission also reviewed data showing where each particular ad for an R-rated movie was first aired between October 2000 and February 2001.

A. Network Television Monitoring

The Commission contracted with a commercial advertising tracking firm, Video Monitoring Services ("VMS"), to track advertisements for rated or labeled products on television programs that Nielsen data indicated were the highest rated among teens or where teens comprised the largest percentage of the audience. VMS continuously monitored eight programs for seven weeks during December 2000 and January 2001: *Malcolm in the Middle*, *Seventh Heaven*, *That '70s Show*, *The Simpsons*, *Titus*, *Total Request Live*, *WWF Heat*, and *WWF Smackdown*. *Malcolm in the Middle*, *Seventh Heaven*, *That '70s Show*, *The Simpsons*, *Titus* and *WWF Smackdown* were the top six shows in the early prime-time (8:00 p.m. to 9:00 p.m.) slot among children 12-17 in terms of number of teen viewers, according to data provided by Nielsen. Because the programs are ranked by audience size among teen viewers, they are not necessarily the programs with the highest percentage of viewers under 17 relative to the total audience. The percentage of children under 18 in the viewing audience for these six shows ranges from 22% to 36% based on March 2001 data provided by Nielsen. MTV's *Total Request Live* and *WWF Heat* were also monitored because they have very substantial youth audiences in terms of percentage, although their audience size is small compared to the network and syndicated programs reviewed. In fact, viewers under 18 make up a majority (58%) of *Total Request Live*'s audience. Most of these television programs are programs that the industry marketing plans had earlier indicated they advertised on when they wanted to reach children under 17.[6] VMS monitored programs appearing in the New York City market.

Table A below sets out audience size for these programs based on March 2001 Nielsen data:

Table A: Network Program Demographics

Program	(Network)	Average Audience 12-17	Average Total Audience	Percentage of Audience Under 18
Malcolm in the Middle	(FOX)	2,264,000	15,062,000	31%
Simpsons	(FOX)	2,189,000	15,342,000	30%
Titus	(FOX)	1,364,000	9,896,000	24%
That '70s Show	(FOX)	1,342,000	11,272,000	22%
WWF Smackdown!	(UPN)	1,323,000	7,392,000	36%
Seventh Heaven	(WB)	1,270,000	7,271,000	32%
WWF Heat	(MTV)	453,000	2,449,000	35%
Total Request Live	(MTV)	283,000	605,000	58%

B. Syndicated Programs

In addition to the network programs listed above, the Commission reviewed syndicated programming. Specifically, the Commission reviewed tapes of seven of the top eight syndicated programs airing daily Monday through Friday in terms of audience among children 12-17 based on Nielsen data: *Friends*, *Seinfeld*, *Drew Carey*, *Home Improvement*, *Spin City*, *Seventh Heaven*, *Moesha*, and *The Simpsons*.[7] The programs were taped on selected dates from mid-December 2000 to mid-January 2001 as aired in Chicago, Cleveland, Dallas, Los Angeles, San Francisco, and Seattle during the weekday after-school and pre-prime-time periods (between 4:00 p.m. and 8:00 p.m. local time). Because these programs are ranked by audience size, they are not necessarily the programs with the highest percentage of viewers under 17 relative to the total audience. The percentage of children under 18 in the viewing audience for these six shows ranges from 16% to 39% based on March 2001 data provided by Nielsen. Table B below sets out the audience demographics for the syndicated programs.

Table B: Syndicated Program Demographics

Program	Average Audience 12-17	Average Total Audience	Percentage of Audience Under 18
Friends	897,000	8,678,000	20%
Drew Carey	627,000	5,154,000	23%
Seinfeld	624,000	7,671,000	16%
Seventh Heaven	436,000	2,437,000	37%
Home Improvement	428,000	3,380,000	27%
Spin City	402,000	4,345,000	20%
Moesha	312,000	2,024,000	39%

C. First Airing Data

The Commission's television monitoring was limited to only certain episodes of a limited number of network and syndicated programs, as noted above. To supplement this monitoring data, the Commission obtained "first airing" data from VMS to gain additional information about where the industry members placed their advertisements. The first airing data indicate, among other information, the date, time, station, and program on which each different advertisement for an R-rated movie, stickered recording, or M-rated game[8] first aired. As these data document only the first showing of any one ad, they do not indicate whether each ad was repeatedly shown on these programs, or on which other programs an ad might have been aired after the initial occasion.

The Commission's review of the first airing data indicates that at least five R-rated movies, rated R at least in part for violence, were advertised on the syndicated programs identified in Table B — programs among the top eight most popular syndicated programs airing Monday through Friday in terms of audience among children 12-17. Table C lists these motion pictures.[9] All of these ads were aired between 6:00 p.m. and 9:00 p.m.

Table C: Advertisements for R-rated Motion Pictures First Aired on Programs Popular with Teens

Motion Picture Title	Studio	Program During Which Ad Was First Aired	Network, Syndicated or Cable
3000 Miles to Graceland	Warner Brothers	Drew Carey	Syndicated
Book of Shadows: Blair Witch 2	Artisan	Friends	Syndicated
Book of Shadows: Blair Witch 2	Artisan	The Simpsons	Syndicated
Proof of Life	Warner Brothers	Friends	Syndicated
Proof of Life	Warner Brothers	Friends	Syndicated
The Gift	Paramount	Friends	Syndicated
Valentine	Warner Brothers	Friends	Syndicated
Valentine	Warner Brothers	The Simpsons	Syndicated
Valentine	Warner Brothers	Friends	Syndicated

The "first airing" data indicate that advertisements for explicit recordings were placed primarily on cable television programs with substantial youth audiences in terms of percentage, ranging from 35% to 58%. These programs include the programs identified in Table D:

Table D: Demographics of Television Programs Where Ads for Stickered Music Recordings First Aired

Program	(Network)	Average Audience 12-17	Average Total Audience	Percentage of Audience Under 18
WWF Smackdown	**(UPN)**	1,323,000	7,392,000	36%
Jackass	**(MTV)**	357,000	1,217,000	35%
Total Request Live	**(MTV)**	283,000	605,000	58%
Top Ten Live at 106 & Park	**(BET)**	112,000	432,000	41%

Source: Nielsen data as of March 2001.

Table E sets out those recordings for which advertisements were initially aired on programs with a substantial teen audience. All of these programs began before 9:00 p.m.[10]

Table E: Advertisements for Stickered Music Recordings First Aired on Programs Popular with Teens

Recording Title	Recording Artist and Label	Program During Which Ad Was First Aired	Network, Syndicated or Cable
Awake	Godsmack/UMG	WWF Smackdown	Network
Awjuswannaseing	Musiq Soulchild/UMG	BET's Top Ten Live (106th & Park)	BET
Awjuswannaseing	Musiq Soulchild/UMG	BET's Top Ten Live (106th & Park)	BET
Back For the First Time	Ludacris/UMG	BET's Top Ten Live (106th & Park)	BET
Back For the First Time	Ludacris/UMG	BET's Top Ten Live (106th & Park)	BET
Checkmate	B.G./UMG	BET's Top Ten Live (106th & Park)	BET
Chocolate Starfish and the Hot Dog-Flavored Water	Limp Bizkit/UMG	WWF Smackdown	Network
Da Baddest	Trina/WEA	BET's Top Ten Live (106th & Park)	BET
Damizza Presents: Where I Wanna Be	Various/WEA	BET's Top Ten Live (106th & Park)	BET
Dracula 2000 Soundtrack	Various/Sony	WWF Smackdown	Network
Ghetto Postage	Master P/EMI	BET's Top Ten Live (106th & Park)	BET
H.N.I.C.	Prodigy of Mobb Deep/Sony	BET's Top Ten Live (106th & Park)	BET
H.N.I.C.	Prodigy of Mobb Deep/Sony	BET's Top Ten Live (106th & Park)	BET
Holy Wood	Marilyn Manson/UMG	Total Request Live (TRL)	MTV
Lights Out	Lil' Wayne/UMG	BET's Top Ten Live (106th & Park)	BET
No Limit Records	Various/EMI	BET's Top Ten Live (106th & Park)	BET
Nothin' But Drama	Profyle/UMG	BET's Top Ten Live (106th & Park)	BET

Pleezbaleevit	Snoop Dogg Presents Doggy's Angels/TVT	Jackass	MTV
Reflection Eternal	Talib Kweli & Hi-Tek/EMI	BET's Top Ten Live (106th & Park)	BET
Renegades of Funk	Rage Against the Machine/Sony	Total Request Live (TRL)	MTV
Restless	Xzibit/Sony	BET's Top Ten Live (106th & Park)	BET
Stankonia	Outkast/BMG	BET's Top Ten Live (106th & Park)	BET
Stankonia	Outkast/BMG	WWF Smackdown	Network
Stankonia	Outkast/BMG	WWF Smackdown	Network
Take a Bite Outta Rhyme	Various/UMG	Total Request Live (TRL)	MTV
The Mark, Tom & Travis Show	Blink 182/UMG	Total Request Live (TRL)	MTV
The Reunion	Capone-N-Noreiga/ADA	BET's Top Ten Live (106th & Park)	BET
The Gift of Game	Crazy Town/Sony	Total Request Live (TRL)	MTV
The Dynasty- Roc a Familia	Jay Z/UMG	BET's Top Ten Live (106th & Park)	BET
The Understanding	Memphis Bleek/UMG	BET's Top Ten Live (106th & Park)	BET
The Last Meal	Snoop Dogg/EMI	BET's Top Ten Live (106th & Park)	BET
The W	Wu Tang Clan/Sony	BET's Top Ten Live (106th & Park)	BET
The W	Wu Tang Clan/Sony	Total Request Live (TRL)	MTV
Told You So	Sparkle/UMG	BET's Top Ten Live (106th & Park)	BET
TP-2.com	R. Kelly/BMG	BET's Top Ten Live (106th & Park)	BET

III. PRINT MEDIA

A. Magazines Reviewed to Assess Ad Placement

The Commission reviewed the December 2000 and January-March 2001 editions of magazines identified in the industry marketing plans reviewed for the September 2000 Report when the target audience included children under 17. The chart below sets out the name of the publication, the particular issues reviewed for this report, and age demographic data for the publication (updated from the September 2000 Report, unless otherwise noted):

Magazine	Issues Reviewed	Age Demographics
DC Comics	12/00, 1/01, 2/01	median age is 16.8 (data from September 2000 report)
Electronic Gaming Monthly	12/00, 1/01, 2/01, 3/01	47% under 18; average age is 21; median age is 18
GamePro	12/00, 1/01, 2/01, 3/01	58% age 16 and under
Metal Edge	12/00, 1/01, 2/01, 3/01	average age is 21
Unofficial Playstation	1/01, 2/01	43% age 16 or younger
Right On!	12/00, 1/01, 2/01, 3/01	71% of audience is under 18; 58% of audience is under 16; "Our median age is 16; however, many of our readers are as young as 8 and range into their 30's."
Seventeen	1/01, 2/01	47% of audience under 18; median age is 18.8
Teen	12/00, 1/01, 2/01	median age for readers 12 and up is 17; median age for readers 12-24 is 16; median age for readers 12-19 is 15.
Teen People	Holiday '01, 2/01	59.3% of readers between 12 & 16
Thrasher	12/00, 2/01, 3/01	median age is 17.5, average age is 16.3 (data from September 2000 Report)
Tips and Tricks	1/01, 2/01	77.1% under 24 (data from September 2000 Report)
Vibe	12/00, 1/01, 2/01, 3/01	43.6% under 18 (data from September 2000 Report)
WWF Magazine	12/00, 1/01	62% between 12 & 17
YM	12/00, 1/01, 2/01	70% of female readers between 12 & 19

B. Magazines and Newspapers Reviewed to Assess Rating Information Practices

To assess rating information practices (whether a rating or rating reason was displayed clearly and conspicuously) the Commission examined ads in the following magazines and general circulation newspapers, in addition to the 14 magazines identified above. Because rating information is primarily for parents, it made sense also to review general circulation periodicals, and not just periodicals aimed at children, to see if rating information was included.[11]

Magazines	Issues Reviewed
Computer Gaming World	12/00, 1/01, 3/01
Nintendo Power	12/00, 2/01
Official SEGA Dreamcast	Holiday 2000
PC Gamer	12/00, 1/01, 3/01
Rolling Stone	12/00, 1/01, 2/01, 3/01
Spin	1/01, 3/01
Teen Celebrity	March 2001
Teen Movieline	Winter 2000
The Official U.S. Playstation Magazine	12/00, 1/01, 2/01
Newspapers	**Issues Reviewed**
Atlanta Journal-Constitution	1/5/01, 1/12/01, 1/26/01
Chicago Sun-Times	12/15/00, 12/22/00, 12/29/00, 1/5/01, 1/12/01, 1/19/01, 1/26/01
Chicago Tribune	12/15/00, 12/22/00, 12/29/00, 1/5/01, 1/19/01, 1/26/01
Dallas Morning News	12/15/00, 12/22/00, 12/29/00, 1/5/01, 1/12/01, 1/19/01
Los Angeles Times	12/15/00, 12/29/00, 1/5/01
New York Times	12/15/00, 12/22/00, 12/29/00, 1/5/01, 1/12/01, 1/19/01, 1/26/01
The [Cleveland] Plain Dealer	12/8/00, 12/15/00, 12/22/00, 12/29/00, 1/5/01, 1/12/01, 1/19/01, 1/26/01
Seattle Post-Intelligencer	12/15/00 - 12/21/00, 12/22/00 -12/28/00, 1/5/01 - 1/11/01, 1/19/01 - 1/25/01
Seattle Times	12/15/00, 12/29/00, 1/5/01, 1/12/01, 1/19/01
Washington Post	12/15/00, 12/22/00, 12/29/00, 1/5/01, 1/12/01, 1/19/01, 1/26/01

ENDNOTES

1. *See* September 2000 Report at 15, 33, 48-49.

2. *See generally id.* and Appendix I to the September 2000 Report.

3. *See* Appendix I to the September 2000 Report. Moreover, only one had more than 37% under 18. *Id.* The 11 programs are those network and syndicated programs for which the Commission had audience composition data. Those industry members that have defined a substantial youth audience have used a 35% under 17 figure, a threshold that only one of the 11 programs would likely reach.

4. *See* September 2000 Report at n.283 and Appendix I.

5. According to the editor of *GamePro*: "GamePro is the fifth largest male-teen magazine and the largest-circulation video game publication in the U.S. According to Teen Research Unlimited, 20 percent of all American male teens (one out of five) read *GamePro* in '99." *Editor's Letter: I'll Take GamePro to Win*, GamePro, Apr. 2000, at 26. *GamePro*'s readership is nearly 60% under 17. *See* chart *infra* Section III.A.

6. Newer programs rose to popularity only after the time that the industries prepared the advertising dissemination schedules which were later provided to the Commission for the September Report.

7. Ranking is based on Nielsen data as of December 2000. Technically, older episodes of *The Simpsons* are no longer in "barter syndication," and for that reason Nielsen no longer ranks the program among those syndicated shows. *The Simpsons* is included here because, for the three years preceding the release of the September Report when the program was barter syndicated, that program ranked first, third, and first among those programs in terms of audience size among children 12-17. *See* Appendix I to September 2000 Report. For purposes of this report the Commission refers to older episodes of *The Simpsons* as "syndicated" to distinguish those programs from the first-run network episodes.

8. The first airing data show that one M-rated game was initially advertised on a television program that likely has a substantial teen audience. The game, THQ's *Evil Dead*, was advertised on an early morning MTV program.

9. Where a particular motion picture or recording appears two or more times in the first airing data, different ads for that film or recording initially aired on those programs.

10. Some advertisements for stickered recordings were aired between 9:00 p.m. and 10:00 p.m. during the second hour of the program *WWF Smackdown*, which begins before 9:00 p.m.

11. The general circulation periodicals were not reviewed for the purpose of assessing whether ads were targeted to children.